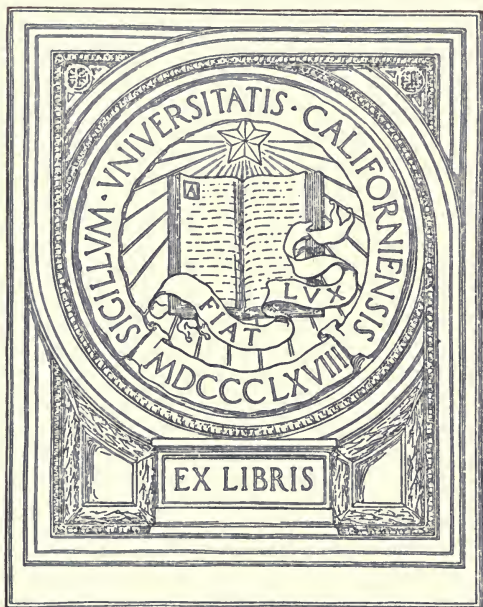






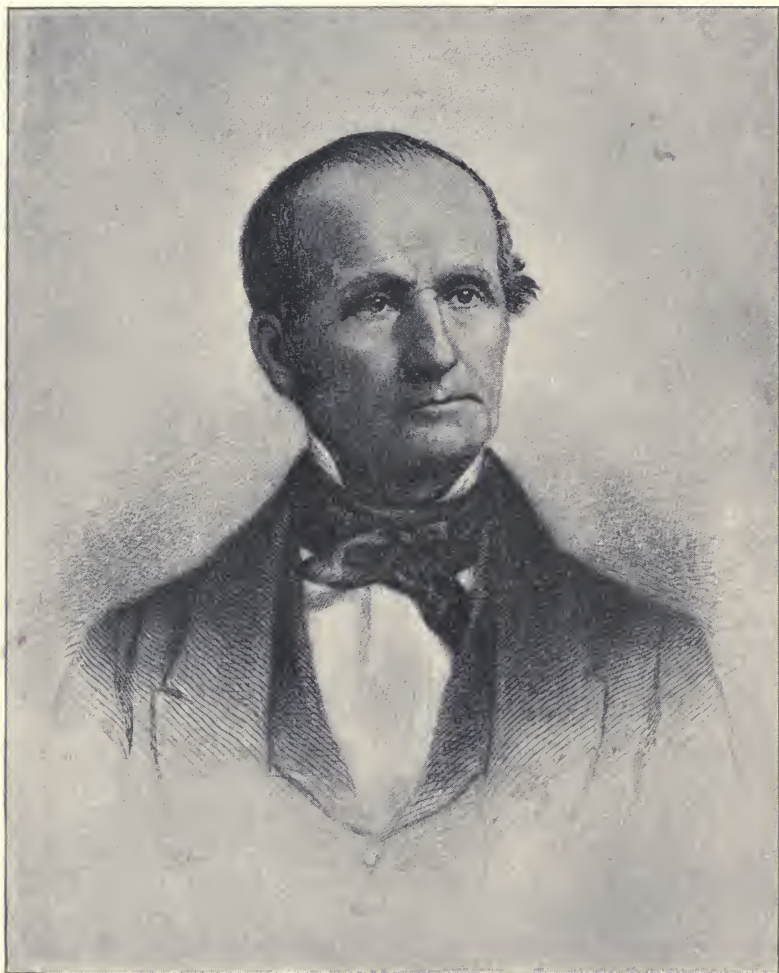
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ALFRED KELLEY

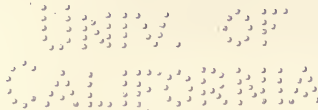
HIS LIFE AND WORK

BY

THE HON. JAMES L. BATES

OF THE OHIO BAR

PRIVATELY PRINTED



COLUMBUS, OHIO

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MEMBERS OF THE
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NOTE.

This memoir was prepared by Judge Bates, of Columbus, a son-in-law of Mr. Kelley, at the request of the other members of Mr. Kelley's family, at whose instance it is now printed for private circulation among those who knew Mr. Kelley, and for the purpose of putting on record a statement of his services to the State, which he rendered in so many ways. It is due to the author of this memoir to say that he has not had the opportunity of reading the proofs, and for errors of editorship or the press he is therefore not responsible.

CAMBRIDGE, MASS., *October*, 1888.

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ALFRED KELLEY;

HIS LIFE AND WORK.

CHAPTER I.

EARLY YEARS.

1789-1810.

Birth and parentage.—Removal to Lowville, N. Y.—Education.—Bound for Ohio.—Dr. Kirtland's account of the journey.—Cleveland in 1810.—Admitted to the Bar.—Appointed Prosecuting Attorney.

The personal efforts and official life of the subject of this biography are so intimately blended with the development of the resources of Ohio, with its commercial and financial prosperity, and with the establishment and maintenance of its credit, that the following narration will necessarily include much of these departments of the history of the State. Mr. Kelley's mental characteristics, and particularly his originating talent, were such, that even when he was associated with others his seemed to be the controlling mind, and he alone was held responsible for results.

Alfred Kelley was born in Middlefield, near Middletown, Connecticut, November 7th, 1789. He was the second son of Daniel and Jemima Kelley, and inherited

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characteristics from both parents. In him were combined intellectual force, tenacity of purpose, and a strong will, for which his mother's family was distinguished; with coolness, a disposition to thorough investigation, and an evenly balanced judgment, which were peculiarities of his father. His early associates were among the sturdy and well ordered inhabitants of New England, and he lived near enough to the Revolution to be affected by its general influence, and particularly by the attachment to home and country which naturally resulted from its privations and success.

The boy remained in Middlefield until the winter of 1798-9, when his parents removed with their family to Lowville, in the northern part of New York. The journey was long, and the country to which they were immigrating was new, even when compared with their New England home. Three or four white families comprised all the inhabitants except Indians. Here the father made favorable investments and accumulated a moderate property by industry and economy.

The son had all the educational advantages which the region in which he lived afforded. He attended the common schools and was several years a student at the Fairfield Academy. His scientific and literary attainments are conclusive evidence that he was a thorough student, and availed himself of all the advantages which were within his reach. Early in his life he exhibited a preference for the legal profession, and his studies were directed accordingly. At some time during the year

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1807 he entered the law office of Judge Jonas Platt, one of the eminent jurists of the State of New York, under whose instruction he studied law until May in 1810, when he started for Ohio, in company with his uncle, Judge Joshua Stow, and Jared P. Kirtland. Judge Stow was then a prominent and influential citizen of the State of Connecticut, and Mr. Kirtland was a medical student from the same State, and younger than Mr. Kelley. The two young men, like many others from New England and New York, were at that time seeking homes in Northern Ohio, which was then "the far West." Some traveled on foot, and others, as did this company, on horseback.

During the previous winter General Peter B. Porter, then a member of Congress, representing a district in Western New York, made a speech, in which he advocated the construction, by the general government, of a canal from the Hudson River to Lake Erie. The public was much interested in the subject, and it was discussed often on the road, and at their stopping places. In a letter of Dr. Kirtland, in which he gives an account of the journey, he says :

"The suggestion in the public estimation was Utopian, as it was in the opinion of the older members of our traveling company. Our journey was along the route subsequently selected for that great work. Mr. Kelley was a firm believer in both its importance and practicability. It was the subject of almost constant debate, not only in our traveling coterie, but at most of our stopping places, and among all classes of people. On Mr. Kelley devolved the task of defending the

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project, which he did on all occasions, with a skill and enthusiasm that excited the admiration of every one, but which entitled him to the rank of a monomaniac in the estimation of the older and conservative portions of his hearers. Conservatism was then the order of the day among statesmen, politicians, and financiers.

“His example and influence over myself during that journey I have felt through life. They were the best and most effective schooling I ever received. Bashful, timid, and unstable at that time, I could not fail to admire in him such prominent and opposite traits of character; and though I was then prone to consider him as severe and dogmatical, yet I was a full believer in all he said, as well as secretly an admirer of his mode of doing. Of course I adopted, to some extent, him as a model and oracle.”

In the latter part of June, and in his twenty-first year, Mr. Kelley reached Cleveland and became one of its inhabitants. At that time Cleveland contained three framed and five or six log houses. Neither of the framed dwellings was finished. One person attended to all the business of the Post Office, the Recorder's Office, the Clerk of the Supreme Court, and the Court of Common Pleas.

At the first session of the Supreme Court held in Cuyahoga County, and in the year 1810, Mr. Kelley was admitted to the Bar, and at the first term of the Court of Common Pleas thereafter he was appointed Prosecuting Attorney, which office he continued to hold by successive appointments until 1822, when he resigned on becoming Canal Commissioner. Business came to him imme-

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diately, and he soon practiced in many of the counties on the Reserve.

The Hon. Elisha Whittlesey, who was often with him on the Circuit, in a letter on the subject, says :

“He was distinguished in whatever business he undertook to perform.” . . . “As a draughtsman he was accurate, and I question whether the records contain evidence of many, if they do any, defective bills of indictment, declarations, bills in chancery, or any other legal or equitable proceedings.”

He was also an advocate of extraordinary force and cogency, and when he relinquished his practice to take charge of the construction of the Ohio Canal, it was as large and lucrative as that of any attorney in that part of the State.

CHAPTER II.

LEGISLATIVE SERVICE.

1814-1820.

Elected to the Legislature.—Service on committees.—Reports on proposed amendments to the Constitution of the United States.—Report on canals.—Marriage.—Re-elected to the Legislature.—Efforts to abolish imprisonment for debt.—Resolutions against slavery.—Equalization of taxation.—Investigation of the State Treasury.—Discovery of frauds.

In 1814, and as soon as he had arrived at the required age of twenty-five, Mr. Kelley was elected a member of the Legislature, and with William A. Harper represented Ashtabula, Cuyahoga, and Geauga Counties, which then comprised most of the Reserve. And although he was the youngest man in either branch of the General Assembly, the proceedings show that he was one of the most prominent and influential members.

He was re-elected in 1815. It was a common practice at that time, as it has been since, for the Legislature of one State to suggest an amendment of the Constitution of the United States, or propose some other general object, and request the approval of it by the Legislatures of the other States, and thus exert a combined influence upon Congress.

North Carolina, in pursuance of this custom, proposed an amendment requiring the "Legislatures of the several

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States to district the same, for the purpose of appointing electors of President and Vice-President of the United States," instead of electing them all by a general ticket. The communication of the State of North Carolina was presented to the Legislature by the Governor with an accompanying message, and referred to a committee of five, of which Mr. Kelley was chairman, who, in behalf of the committee, reported as follows :

"The committee to whom was referred the resolution of the Legislature of North Carolina proposing an amendment to the Constitution of the United States requiring the Legislatures of the several States to district the same for the purpose of choosing representatives in Congress, and also for the purpose of appointing electors of President and Vice-President of the United States, have had the same under consideration, and are of opinion :

"That as representatives in Congress are elected for the purpose of acting upon all the various subjects which may come before the National Legislature, as well of a local as of a general nature, it is important that they should be intimately acquainted with the local situation, interests and sentiments of the particular section of the Union which they represent, and that the people should be able to know the qualifications of those whom they elect to represent them, and that the several States should be districted in the most advantageous manner to effect these important objects.

"Yet believing that this can be done, and that most of the States are districted for the purpose of electing representatives in Congress under the provision of the Constitution as it now exists, and that serious inconveniences might in many instances result from requiring absolutely the several States to be divided into a number of districts equal to the number of representatives to which each State may be entitled, and no more. Your committee are therefore of opinion, that it is unnecessary and inexpedient to alter the Constitution of the United States in this respect.

"Your committee are also of opinion that it would be impolitic to district the several States for the purpose of ap-

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pointing electors of President and Vice-President, believing that it would be productive of no material advantages.

“Electors being chosen to perform one definite act only, the same necessity for their being acquainted with the local situations and interests of the different sections of the Union does not exist as in the case of representatives in Congress.”

“Districting the States for the purpose of appointing electors, might also, by dividing a State, destroy that influence to which it is entitled and would otherwise possess, and would in many instances prevent a fair expression of the public will, and produce a choice of electors a majority of whom might act in opposition to the wishes of a majority of the citizens of the State for which they were appointed.”

The Legislature declined to approve the proposed amendment.

The State of Georgia also recommended an amendment of the Constitution of the United States, by which the term of senators in Congress would be reduced from six to four years. This was also received from the Governor, referred to the same committee, and reported upon by Mr. Kelley as follows :

“The committee to whom was referred the resolution of the Legislature of the State of Georgia recommending an alteration of the Constitution of the United States reducing the term of service of senators in Congress from six to four years beg leave to report :

“That although your committee are fully impressed with the belief, that, in order to secure our natural liberties and privileges as well as to give tone and energy to the Government, it is of the utmost importance that the people should have frequent opportunities of expressing their sentiments and feelings upon National affairs, and of displacing such of their representatives as may be incompetent or dangerous, and of electing others to fill their places more able or less dangerous, yet to prevent the pernicious consequences of sudden and violent changes, to temper and regulate the force of popular impulse, to secure a proper degree of uniformity and stability to our National councils, they believe it to be

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of equal importance that one branch of the general government should be composed of men who are not so immediately dependent upon popular opinion, who are subject to be less frequently changed, and a majority of whom may at all times possess the advantages of experience in legislative proceedings and a knowledge of the measures and policy of government. Your committee are also of opinion that it is inexpedient to change the principles of the Constitution, except to remedy material and palpable defects."

The Georgia proposition was not approved.

In 1816 Mr. Kelley was again elected to the Legislature, and with William Kerr represented the counties of Ashtabula, Geauga, Cuyahoga, and Huron. During this session a letter was received from DeWitt Clinton, one of the commissioners appointed by the State of New York for the purpose of ascertaining the practicability of connecting by a canal the Hudson with Lake Erie, calling the attention of Ohio to its importance as an outlet for its products, and suggesting that it should participate in the expense of the work. New York did not feel able to sustain the burden of such an undertaking; and, as Ohio would be materially benefited by it, this proposition was made. The subject was referred to a committee of which Mr. Kelley was chairman; and although the Legislature did not accede to the request the following extract from the report shows a full appreciation of the importance of the enterprise:

"From an examination of the subject submitted to their consideration, your committee are fully impressed with the belief that the making of a canal from the Hudson River to Lake Erie, is an object of the first importance to this State, and to the United States in general, both in a commercial

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and political point of view. The facility which it will afford to the exportation of the surplus produce of our luxuriant soil, and the consequent encouragement of agricultural and commercial enterprise, are effects too obvious to pass unnoticed, and of too much importance to be neglected. As affording a safe, easy and expeditious mode of a mutual interchange of commodities between different sections of our common country, highly advantageous to all,—as increasing the commercial connections, friendly intercourse, and ties of interest, and by these means strengthening the bonds of union between remote parts of the Nation, the contemplated canal presents advantages vastly superior to those resulting from any work of the kind accomplished by the industry of man in any age or country."

Referring to Ohio, with the Lake on the north, and the Ohio River on the South, its climate, soil, and streams, he says:

"We are struck with its natural advantages, which, if improved by an enlightened and liberal policy, will render the situation of Ohio inferior to that of no State in the Union, or country in the world."

In the summer of this same year, and on the 25th day of August, Mr. Kelley was married at Martinsburgh, in Northern New York, to Mary Seymour Welles, the eldest daughter of Major Melancthon W. Welles, of that place. An account of her life ought to be written, for the double purpose of perpetuating the memory of her unusual attractiveness and usefulness, and also of preserving some account of the habits, manners, and domestic usages of that early period.

Mr. Kelley was again elected to the Legislature, in 1819, and, with Ebenezer Merry, represented the same counties—Ashtabula, Geauga, Cuyahoga, and Huron.

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Down to this period, in the State of Ohio, and it is believed in every other State, and in Great Britain, imprisonment for debt was both authorized and practiced. Innocent and honest men were imprisoned for no other reason than that they were unfortunate debtors. The process issued without bond or other security on the part of the creditor. Cruel and even barbarous as it appears now, it was, at that time, a common and usual proceeding. At this session, and on the 24th of December, 1819, Mr. Kelley took the first step in the history of jurisprudence to relieve the innocent from this harsh and cruel practice. On that day he introduced a bill "To abolish imprisonment for debt." It contained also provisions, similar to those now in force, against fraudulent conveyances and other fraudulent acts of debtors which were intended to injure creditors.

The proposition seems to us obviously just, and we even wonder that such a practice ever prevailed. It was, however, so old and so interwoven with legal usages, that only a minority could be induced to favor Mr. Kelley's bill. He was so far in advance of public sentiment on this subject, that it required many years of education to satisfy even a majority of the injustice and inhumanity of allowing the imprisonment of an honest but unfortunate debtor at the will of his creditor.

After the defeat of the bill, Mr. Kelley wrote to a friend:

"The House has to-day disagreed, by a small majority, to my favorite bill, to abolish imprisonment for debt. I was not

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disappointed, although at first a large majority seemed to favor it. The time will come when the absurdity, as well as inhumanity, of adding oppression to misfortune will be acknowledged."

At that early day, the aggressive and dangerous disposition of the slave-holders was exhibited in a determination to extend slavery into our free territories. The proceedings and discussions in Congress rendered it expedient for the Ohio Legislature to declare its opinion on the subject. Resolutions were therefore introduced for that purpose, and the Senate and House disagreed as to the form in which that opinion should be expressed. To settle that disagreement, a committee of conference was appointed, of which Mr. Kelley was a member, and prepared and procured the adoption by the committee of the following preamble and resolution:

"*Whereas*, the existence of slavery in our country must be considered a national calamity, as well as a great moral and political evil; *and whereas*, the admission of slavery within the new states and territories of the United States is fraught with the most pernicious consequences, and calculated to endanger the peace and prosperity of our country. Therefore,

Resolved by the General Assembly of the State of Ohio, That our senators and representatives in Congress be requested to use their utmost exertions to prevent the admission or introduction of slavery into any of the territories of the United States, or any new State that may hereafter be admitted into the Union."

As a member of the committee, he reported the preamble and resolution to the House, by which it was adopted unanimously.

At this session the inequality of taxation attracted

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- the attention of Mr. Kelley, and, on his motion, a standing committee on finance was appointed, of which he was made chairman. Not long afterward, as such chairman, he submitted an elaborate report, in which he pointed out defects in the mode of valuing lands, which were then nearly the exclusive source of revenue, as well as in the method of assessing and levying taxes; and recommended a mode of simplifying both.

At that time, land was divided into three grades, and was taxed by the acre, and not according to its value. In relation to this principle of taxation, as well as the method of assessing and collecting taxes, the committee reported:

“That they have taken into consideration that part of his Excellency’s Message to them referred, as well as the various laws, now in force, relating to the revenue; and from a diligent examination of the subject, your committee are convinced, that many defects exist in our present system of finance. Some of these defects affect the principles on which the taxes are levied; but the more numerous, as well as more serious difficulties, appear to be in the method of assessing and collecting the taxes already imposed.

“The most equitable, as well as the most simple method of raising a revenue from real property, is to levy a tax on lands, in proportion to their value. And were it not for the many difficulties which suggest themselves to this method of assessment, in the present situation of the state, your committee would feel no hesitation in recommending its adoption. The expense attending an actual valuation of all the various tracts of land within the state, and of equalizing such valuation amongst the different districts or sections of the state, so that the various tracts might be assessed in proportion to their relative, as well as real value, would be very considerable. In all new countries which are fast progressing in improvement, and where experience as well as adventitious circumstances are daily disclosing the important advantages pos-

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essed by local situations; the real as well as relative value of property is so rapidly changing, that the necessity of a frequent revaluation, and general equalization, would greatly enhance the expenses of levying a tax. When all the lands within the state shall become subject to taxation, and shall have obtained something like a fixed and permanent value, and possibly before that period, this system may, with propriety, be adopted.

“There appear to be many serious defects in the present method of collecting the tax levied on lands, and making entries, alterations, and transfers, on the tax lists. . . .

“The present system is, in the opinion of your committee, too complicated and intricate. Laws upon which all classes of community are required constantly to act, should be plain and simple, and should provide an easy method for rectifying mistakes when they occur. Your committee are aware of the difficulty of rendering any system of taxation, so complicated in its very nature, as plain and simple as would be desirable; yet they believe much might be done to remedy some of the most material defects of that which is now in force. . . .

“Some further provisions to secure the purchasers of lands sold for the non-payment of taxes, an undisturbed possession and complete title, seem to be necessary, in order to render it safe to purchase lands so sold. . . .

“Your committee recommend to provide by law for strict regularity in all the proceedings to effect sales of land for non-payment of taxes, and that the deed of conveyance, bottomed on such sales, be declared, at least, *prima facie* evidence of title.

“Many of the errors which have crept into our tax lists, originate in the inability of the boards of commissioners, in many of the counties, to transact business which requires so much care and exactness. Experience proves that the qualifications of a candidate to fill that office, do not always form a criterion of his success in the election.”

At this session also the term of the Treasurer of State expired, and he was re-elected by a joint ballot of the Legislature. Not long after his re-election, suspicions arose in regard to the safety of the public funds, and a

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special committee was appointed to examine the books of the Auditor and Treasurer. On the 7th of February, the committee reported a deficiency of \$5,494.20, without recommending any action in relation to it. On the 11th of February, in secret session, a resolution was offered to prepare and report articles of impeachment against the Treasurer of State, which was laid upon the table. At this stage of the proceedings, it appearing that nothing was likely to be done to secure the funds then remaining in the treasury, Mr. Kelley offered a resolution which was amended and adopted as follows :

“Resolved, by the House of Representatives, that a committee of five members be appointed to examine the funds of the Treasury, and request the Treasurer to lock and seal the vault of the Treasury, and that said committee report, from time to time, to this House, any information they may think important.”

Mr. Kelley was one of the committee, but not its chairman, and on the 16th the committee made a report from which it appears that they waited upon the Treasurer the day they were appointed, and he requested that the examination be delayed until the next day ; and an arrangement was made, on his suggestion, that the keys be divided between them. While in this situation, the committee thought it prudent “to keep an eye on the Treasury,” and therefore a part of them kept possession of the Governor’s room “for the night.” The door of the Governor’s room was opposite to, and across a small

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hall from, the door of the Treasurer's office. This extraordinary vigilance was considered necessary in order to prevent any interference with the funds, and especially the removal of any money or securities which might have been deposited temporarily to cover all or any part of the deficiency. It is generally the case that some outside parties are connected with such defalcations, and are willing to aid in concealing them and protecting the guilty officers. The next morning the Treasurer requested further time, and offered to resign on Monday, the 14th, if the examination should be delayed to that time. The delay was granted. On Monday the Treasurer said that his sureties "had directed him not to resign his office." He however permitted the examination to proceed, and the committee found and reported a deficit of \$11,431.78. Before the examination was completed the Treasurer resigned. The committee retained the keys until the 17th, when his successor was appointed.

Not long afterward the State received this deficit, and the settlement appears in the proceedings of a subsequent Legislature.

It is quite evident to any one acquainted with the character of Mr. Kelley that the resolution as originally drawn did not simply "request the Treasurer to lock and seal the vault," but contained terms giving the committee such authority as would insure that result. This is corroborated by a statement of Judge Swan, who was living in Columbus at the time, and was familiar

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with all the facts; which statement was made in relation to Mr. Kelley's election to the Senate in 1855:

“Nor was it entirely forgotten that on a former occasion, far back in our history, Mr. Kelley had detected and exposed a treasury defalcation, which had escaped the penetration of every other member of the Legislature. That his boldness and penetration had brought to light the unworthy incumbent's guilt, and had driven him in disgrace from his office. That by Mr. Kelley's firmness and extraordinary exertions, the amount abstracted from the Treasury had been secured, and the residue of the public money to a vast amount, and including fifty thousand dollars, a tax levied on the Bank of the United States, effectually secured from waste and plunder.”

CHAPTER III.

LEGISLATIVE SERVICE CONTINUED.

Canals.—A message from the Governor.—Condition of the blacks.—Elected to the Senate.—A question about lotteries.—Mr. Kelley's report thereupon.

The discussions, during the preceding eight or nine years, growing out of the New York Canals, had, by this time, suggested similar improvements in other States. The practicability and usefulness of such public works Mr. Kelley had advocated all through that period. Soon after he became a citizen of Ohio, he made himself familiar with its resources and its topography. No one in the State was more familiar with its streams and surface; and at a very early day he became satisfied that the Lake and the Ohio River might be connected by a navigable canal. Few then concurred with him in this opinion; but he was so accustomed to be in advance of public sentiment that he was not at all deterred by being in a minority. The subject was freely discussed by the members of the Legislature at this session, and, with a view of formally presenting it to that body and to the public at large, a resolution was adopted by the House, requesting the Governor to communicate thereto such information as was in his possession relating to a Canal connecting Lake Erie and the Ohio River. The Gov-

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ernor responded to this resolution by a message in which he furnished "representations, ideas, and opinions being derived from casual observations and various individuals." A careful reading of the message, which contains much statistical and topographical information, will suggest to any one familiar with Mr. Kelley's knowledge of these subjects and the clearness and force of his statements, that the argument, with the statistics, were furnished by him. Many copies of the message were printed and circulated by order of the House; and this incipient step did much to form the public opinion which some years later secured that great public improvement.

At this period the prejudice against the African race was very intense even in many of the free States. The blacks were brought to this country by force, were compelled to labor in the South without compensation, and were, in that section, even debarred from education and from all legal means of protection against what were conceded to be wrongs inflicted by the whites. In Ohio, though educated and free, they were not allowed to testify against a white man. The injustice of this rule was as evident to Mr. Kelley, then, as it became many years afterward to all reasonable men; and at this session, with a small minority, he voted in favor of giving to the negro the right of testifying as fully as it was possessed by the whites.

In 1821 Mr. Kelley was elected to the Senate, and represented the counties of Cuyahoga, Huron, and San-

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dusky. The Legislature convened on the 3d day of December, and on the 11th the Governor transmitted to the Senate a memorial of the Mayor, Aldermen, and Common Council of the District of Columbia—in which it is stated that by an act of Congress the memorialists are authorized to establish a lottery within the District as a means of procuring money for the purpose of “effecting important improvements in the City of Washington, which the ordinary revenue thereof will not accomplish,” provided the amount “so authorized to be raised” shall not exceed ten thousand dollars each year. The memorialists further state that when these lotteries are put in operation, prohibitory laws are enacted by some of the States, and the purpose of them is in part defeated. They therefore ask, in behalf of their fellow-citizens, the active interposition of the State of Ohio in their favor. Reference is made to the unimproved condition of the District, which twenty years before was “for the most part covered with woods, impassable marsh, without inhabitants save the occupants of one or two farms.” And they state their wish to invest the proceeds in “the building of a City Hall, of Lancasterian schools, of a Penitentiary,” etc. They also refer to the question whether a State has a right to prohibit the sale of lottery tickets authorized to be issued in another jurisdiction, in regard to which they express no opinion, but think it sufficient that it has been decided in favor of the prohibitory laws. They seek no controversy, and only ask of the States what

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they "have always rendered to them." They conclude with a moving appeal on account of the name of the City, and the equity of their claim to toleration.

This memorial was referred to a committee of three members, of which Mr. Kelley was chairman. He prepared the following report, and, as chairman, submitted it to the Senate on the 24th of December :

"The committee to whom was referred the memorial of the 'Mayor, Aldermen, and Common Council of the city of Washington,' praying that an act may be passed, 'authorizing the sale, within the State of Ohio, of tickets in any lottery which has or may be authorized for public purposes in said city,' have had the subject under consideration, and now submit the following

REPORT.

"That, from an examination of the subject connected with the prayer of the petitioners, your committee are convinced it has been the policy of the General Assembly of Ohio to refuse all similar applications, as well those made by our own citizens as by citizens of other states.

"Several applications have been made by citizens or bodies corporate within this state, for the purpose of obtaining authority from the Legislature to raise money by way of lotteries to aid in the prosecution of some favorite objects. These applications, though made for purposes in themselves confessedly laudable, and of manifest public utility, have of late years been uniformly refused. This refusal has probably resulted from a conviction on the part of the Legislature, that lotteries are detrimental to the public welfare and demoralizing in their influence on the community. In this opinion, your committee fully concur.

"The direct and obvious tendency of lotteries is to take from the many, and give to the few; to create fortunes for individuals at the expense of their fellow-citizens, and thereby in some measure destroy that equality in the distribution of property which we believe to be one of the strongest pillars of a republican government. We conceive the dealing in lottery tickets to be a species of *gaming*, which, in many in-

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stances, induces at least a partial reliance on fortune for that support and competency for the attainment of which prudence teaches us to rely on our own exertions. So far as this is true, lotteries tend directly to discourage industry, which is the parent of national, as well as individual, wealth and prosperity; and to promote idleness, and a spirit of imprudent speculation, with all their attendant train of disappointments, vices, and crimes. We, moreover, conceive it extremely inconsistent for a legislature, whose acts prohibit private or individual gaming, under severe penalties, to sanction legal or public gaming, which, in its effects, may be equally pernicious. Nor can we admit, in this instance, that the end, however laudable, will justify the means.

“The raising of money by lotteries is only another method of taxing the people, more agreeable, perhaps, to some, because voluntary; but doubly severe and oppressive in its effect, as the people are taxed not only for the benefit of the public, but also to create fortunes for successful individuals—and we can see no difference, as it respects the burden of the contribution, whether the people are induced by flattering promises to part with their money, or whether it is taken from them by the strong arm of legal authority.

“The people of Ohio, we believe, feel no hostility to the growth or improvement of the city of Washington; on the contrary, we are confident they feel the same pride, and the same interest in the respectability and beauty of our national metropolis—of that city which bears the beloved name of Washington—which is common to the bosom of every American. But we conceive that neither justice nor good policy will permit this General Assembly, who are constituted the guardians of the welfare and morals of the people of Ohio, to sacrifice those important considerations in order to aid in the improvement of the city of Washington, however desirable that object may be.

“Interesting as the questions of state rights and prerogatives may be to the General Assembly and people of Ohio, we are far from accusing the citizens of Washington of any improper interference in the decision of those questions. And, even had they so interfered, we are not conscious that motives of resentment would indicate to this General Assembly any other course in relation to the memorial under consideration than that pointed out by justice and sound policy. While the Legislature of Ohio are disposed to defend with

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firmness the rights and prerogatives of the State by all reasonable and prudent means, we believe they are not disposed to be illiberal or unjust, even to those who may not coincide with them in opinion. And we are confident that no reasonable man, or body of men, will attribute to improper motives a refusal of this General Assembly to extend to the citizens of other districts or states privileges which, from motives of policy, are denied to the citizens of Ohio.

"Your committee therefore recommend the adoption of the following resolution, viz :

"Resolved by the General Assembly of the State of Ohio, That the prayer of the mayor, aldermen, and common council of the city of Washington, soliciting the passage of a law authorizing the sale of lottery tickets within this State, is inconsistent with sound policy, and therefore ought not to be granted.

Resolved, That his Excellency, the Governor, be requested to transmit a copy of the foregoing report and resolution to the mayor of the city of Washington."

The report was adopted by the Senate and House.

CHAPTER IV.

PUBLIC SCHOOLS AND THE PUBLIC LANDS.

Public lands set apart for schools.—Maryland's objections.—Legislative report in full.—Equal privileges claimed for all the States.—Maryland demands her share.—Resolutions transmitted to Governor and Legislature of Ohio.—Views of New Hampshire.

Very soon after the adoption of the Constitution of the United States, the importance of schools as an agent for the diffusion of knowledge was appreciated by the members of Congress as well as by all other thinking and intelligent people. It was obvious to them that our form of government is not adapted to a nation in which the masses are ignorant and illiterate. That body therefore, in the formation of new States, provided for the stability of the government by setting apart in each of such States, with the exception of Kentucky, a portion of the public lands as a fund for the establishment and support of schools; and, in some instances, of higher grades of institutions of learning. The aggregate of lands which had thus been set apart for schools in the new States, when added to what would be thus set apart in others to be thereafter organized, was very large, and its magnitude attracted the attention of the old or original States. Some of them entertained the idea that such appropriations deprived them of their share of the

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value of such lands, and were therefore unjust. Under the belief that they had been thus wronged, the Legislature of the State of Maryland, in the early part of the year 1821, adopted a report in which this claim is fully set forth, and a full equivalent, from the public lands, is specifically demanded. This report was approved by the State of New Hampshire in June of that year. That approval was also accompanied by a report in which the action of Congress, in behalf of the old States and Kentucky, is invoked, not as a matter of favor, but of right.

These reports were transmitted to the several States of the Union for approval, and to the senators and members of Congress to induce their favorable action. The discussion involved important national questions, and was carried on between States. The amount involved, according to the reports referred to, was more than fourteen millions of acres of the public domain.

To appreciate this discussion, and particularly the views entertained by the State of Ohio, it is necessary to introduce a large portion of the report of the State of Maryland.

That State presented its view as follows :

“The committee, to whom was referred so much of the Governor’s message as relates to education and public instruction, beg leave to report :

“That they concur with his Excellency in believing education, and a general diffusion of knowledge, in a government constituted like ours, to be of great importance, and that, ‘in proportion as the structure of a government gives weight to public opinion, it is essential that the public opinion should

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be enlightened.' Your committee consider our government as emphatically a government of opinion. A general diffusion of knowledge, which is essential to its right administration, can not be effected, unless the people are educated. No high degree of civilization, of moral power and dignity, or of intellectual excellence; no superiority in science, in literature, or in liberal and useful arts, which constitutes the noblest national supremacy, can be attained without the aid of seminaries of learning. The establishment of literary institutions, then, of all grades, from the common school up to the university, becomes the first duty of the Legislature of a free people.

Your committee are well aware of the difficulty, in the present embarrassed state of our pecuniary concerns, of providing the means of making education general. They are fully sensible, that at this time large appropriations out of the public treasury for this purpose, all-important as it is, can not be expected. They deem it, therefore, their duty to recall to your notice a Report and certain Resolutions, presented to the Senate at the last session by a committee of like nature with the present, which has been referred to your committee, as a part of the unfinished business. The object of these Resolutions was to call the attention of Congress and the Legislatures of the several States to the Public Lands, as a fund from which appropriations for the purposes of education may with justice be claimed, not only by Maryland, but all the original States and three of the new ones.

"One thirty-sixth part of all the States and Territories (except Kentucky), whose waters fall into the Mississippi and the Gulf of Mexico, has been appropriated by Congress, wherever the Indian title has been extinguished, and provisions made for further appropriations, according to the same ratio, wherever the Indian title may hereafter be extinguished, for the support of common schools; and other large appropriations have been made for the support of seminaries of a higher grade. Your committee are of opinion, that the States for whose benefit no such appropriations have been made are entitled to ask them of Congress, not as a matter of favor, but of justice. That this may fully appear, especially as the right of those States to an equal participation with the States formed out of the Public Lands in all the benefits derived from them has been doubted, your committee have

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deemed it proper to take a cursory view of the manner in which they have been acquired.

“Before the war of the revolution, and indeed for some years after it, several of the States possessed, within their nominal limits, extensive tracts of waste and unsettled lands. These States were all, at that epoch, *regal*, and not *proprietary*, and the crown, either directly or through the medium of officers, whose authority had been prescribed or assented to by the crown, was in the habit of granting those lands. The right of disposing of them was claimed and exercised by the crown in some form or other. They might, therefore, with strict propriety, be called the property of the crown.

“A question arose soon after the declaration of independence, whether those lands should belong to the United States, or to the individual States within whose nominal limits they were situated.

“However that question might be decided, no doubt could be entertained, that the property and jurisdiction of the soil were acquired by the common sword, purse and blood of *all* the States, united in a common effort. Justice, therefore, demanded that, considered in the light of property, the vacant lands should be sold to defray the expenses incurred in the contest by which they were obtained; and the future harmony of the States required, that the extent and ultimate population of the several States should not be so disproportionate as they would be if their nominal limits should be retained.”

“By the treaty of peace in 1788, Great Britain relinquished ‘to the United States all claim to the government property, and territorial rights of the same, and every part thereof.’

“The justice and sound policy of ceding the unsettled lands, urged with great earnestness and force by those States which had united in conquering them from Great Britain, strengthened by the surrender, on the part of Great Britain, of her rights of property and jurisdiction to the United States *collectively*, and aided, moreover, by the elevated and patriotic spirit of disinterestedness and conciliation, which then animated the whole confederation, at length made the requisite impression upon the States which had *exclusively* claimed those lands; and each of them, with the exception of Georgia, made cessions of their respective claims within a few years after the peace. Those States were Massachusetts,

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Connecticut, New York, Virginia, North Carolina, and South Carolina, the charters of which, with the exception of New York, extended westwardly to the South Sea or Pacific Ocean. This circumstance gave to Massachusetts and Connecticut a joint claim with Virginia to such parts of what was then called the North-western Territory as came within the breadth of their respective charters. The rest of that territory lay within the limits of the charter of Virginia. New York, indeed, had an indefinite claim to a part of it. Cessions, however, from all these States at length completed the title of the United States, and placed it beyond all controversy.

“The State of North Carolina ceded its claim to the territory which now constitutes the State of Tennessee.

“Georgia (whose charter also extended westwardly to the Pacific Ocean) at length, in 1802, ceded the territory which now constitutes the States of Mississippi and Alabama, except a small part on the south side of them, which was acquired under the treaty ceding Louisiana. The conditions of that cession were, that the United States should pay one million two hundred thousand dollars to Georgia, and extinguish the Indian title within the limits which she reserved.

“The United States have in this manner acquired an indisputable title to all the public lands east of the Mississippi.

“All the territory west of the Mississippi, together with the southern extremity of the States of Mississippi and Alabama, was purchased of France for fifteen millions of dollars. This sum, as well as the sums required for the purchase of the Indian title to the public lands, was paid out of the treasury of the United States.

“So far therefore as acquisition of public lands has been made by purchase, it has been at the common expense; so far as it has been made by war, it has been by common force; and so far as it has been made by cessions from individual states, it has been upon the ground, expressly stipulated in most of the acts or deeds of cession, that the lands should be ‘considered,’ to use the words of the act passed for that purpose by the State which made the largest cession, ‘as a common fund, for the use and benefit of such of the states as have become, or shall become, members of the confederation or federal alliance of said States, according to their usual respective proportions in the general charge and

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expenditure, and shall faithfully and *bona fide* be disposed of for that purpose, and for no other use or purpose whatsoever.'

"In whatever point of view therefore the public lands are considered, whether as acquired by purchase, conquest or cession, they are emphatically the common property of the Union. They ought to inure, therefore, to the common use and benefit of all the States, in just proportions, and can not be appropriated to the use and benefit of any particular State or States, to the exclusion of the others, without an infringement of the principles upon which cessions from States were expressly made, and a violation of the spirit of our national compact, as well as the principles of justice and sound policy.

"So far as these lands have been sold, and the proceeds been received into the national treasury, all the States have derived a justly proportionate benefit from them; so far as they have been appropriated for purposes of defense, there is no ground for complaint, for the defense of every part of the country is a common concern; so far, in a word, as the proceeds have been applied to national, and not state purposes, although the expenditure may have been local, the course of the general government has been consonant to the principles and spirit of the Federal Constitution. But so far as appropriations have been made, in favor of any State or States, to the exclusion of the rest, where the appropriations would have been beneficial, and might have been extended to all alike, your committee conceive there has been a departure from that line of policy which impartial justice, so essential to the peace, harmony, and stability of the Union, imperiously prescribes.

"Your committee then proceed to inquire, whether the acts of Congress, in relation to appropriations of public lands, have been conformable to the dictates of impartial justice.

"By the laws relating to the survey and sale of the public lands, one thirty-sixth part of them has been reserved and appropriated in perpetuity for the support of common schools. The public lands are laid off into townships, six miles square, by lines running with the cardinal points; these townships are then divided into thirty-six sections, each a mile square, and containing 640 acres, which are designated by numbers. Section No. 16, which is always a central section, has invariably been appropriated (and provision has been made by law for

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the like appropriations in future surveys) for the support of common schools in each township.

“In Tennessee, in addition to the appropriation of a section in each township for common schools, 200,000 acres have been assigned for the endowment of colleges and academies. Large appropriations have also been made in Ohio, Indiana, Illinois, Mississippi, Alabama, Louisiana, Missouri, Michigan, and the North-western Territory, for the erection and maintenance of seminaries of learning of higher grade than common schools. Your committee have not had an opportunity of ascertaining the exact amount of these appropriations, but, from such examination as they have been able to make, it is believed that they bear a smaller proportion to those for common schools than in Tennessee.”

Then, after some statistics which show the amount appropriated and to be appropriated, and making the aggregate as above stated, the document proceeds :

“Such is the vast amount of property destined for the support and encouragement of learning in the States and territories, carved out of the public lands. These large appropriations of land, the common property of the Union, will inure to the exclusive benefit of those States and territories. They are appropriations for state and not for national purposes. They are of such a nature that they might have been extended to all the States; they therefore ought to have been thus extended. All the other States paid their full share for the purchase of the region west of the Mississippi, and for the extinguishment of the Indian title on both sides of that river. Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, and Georgia, besides paying their proportion of those expenses, ceded all their vacant territory on the east side of the Mississippi. All these States, therefore, might with great propriety complain of partiality and injustice, if their application to Congress for similar appropriations for like purposes should be refused. But of this refusal they need have no apprehension, if they are true to their own interests, and are united in asserting them; for, if, contrary to all reasonable expectation, the States which have already received the benefit of literary appropriations should be opposed to the extension of them to their sister States, the latter are

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more than two-thirds in number of all the United States, and have a still larger proportion of representatives in Congress. These States are Vermont, New Hampshire, Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Kentucky, and, together, have one hundred and sixty-nine representatives in Congress. The favored States, on the contrary, have only seventeen representatives. The excluded States have, therefore, an overwhelming majority in Congress, and have it completely in their power to make appropriations for the benefit of their literary institutions, upon the improbable supposition that the representatives of the favored States would oppose them in Congress, a supposition too discreditable to their character for justice to be admitted.

“The magnitude of the appropriations that would be required to place the States which have not yet enjoyed any, for the purposes of education, upon an equal footing with those in whose favor they have already been made, can afford no just ground of objection. For, superior as the population of those States is, yet, if the ratio of appropriation be observed with regard to them which has been adopted in relation to the others, *i. e.*, one thirty-sixth part of the number of acres in the territory of each for common schools, and one-fifth of that one thirty-sixth for colleges and academies, the number of acres required will be much less than has already been given to the favored States and territories; it will indeed amount to but a very small portion of the public lands. For, according to Seybert’s Statistical Annals, those lands, in 1813, amounted to 400,000,000 acres. The amount required for all the excluded States would be less than two and a half per centum of that quantity; to show which more clearly, your committee beg leave to submit the following statement, founded upon calculations made upon the extent of territory in each of those States, as laid down in Seybert’s Statistical Annals.”

Then follows a table showing the number of acres it is claimed each of the old States and Kentucky are entitled to, and the report concludes :

“The circumstance, that the lands which have heretofore

been appropriated for the purposes of education are a part of the territory of the States for whose benefit they have been assigned, can furnish no reasonable ground for the preference which has been given them. The public lands are not the less the common property of all the States because they are situated within the jurisdictional limits of the States and territories which have been formed out of them. Such States have no power to tax them; they can not interfere with the primary disposal of them, or with the regulations of Congress for securing the titles to purchasers; it is, in fact, Congress alone that can enact laws to affect them. The interest which a citizen of an Atlantic State has in them, as a part of the property of the Union, is the same as the interest of a citizen residing in a State formed out of them. But hitherto appropriations of them for state purposes have only been made in favor of such States; and the citizen on the eastern side of the Allegheny may well complain, that property in which he has a common interest with his fellow-citizen on the western side should be appropriated *exclusively* to the use of the latter. That this is the fact in regard to that part of the public lands which have been assigned for the support of literary institutions and the promotion of education, can not be denied.

“Your committee do not censure the enlightened policy which governed Congress in making liberal appropriations of land for the encouragement of learning in the West, nor do they wish to withdraw one acre of them from the purposes to which they have been devoted; but they think they are fully justified in saying, that impartial justice required that similar appropriations should have been extended to all the States alike. Suppose Congress should appropriate 200,000 acres of the public lands for the support of colleges and academies in New York; and Virginia, who gave up and ceded a great portion of those lands to the United States, on the express condition that ‘they should be considered as a common fund for the use and benefit of all of them according to their usual respective proportions in the general charge and expenditure,’ should apply for a similar grant, and her application should be refused; would she not have a right to complain of the partiality of such a measure, and to charge the Federal Government with a breach of good faith, and an infringement of the conditions on which the cession was made? It can not be denied that she would. Congress have already made a grant of 200,000 acres of land for the support of colleges and

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academies, not indeed in New York, but in Tennessee. Would not Virginia, if she now made an application for a like grant, and were refused, have the same reason to complain, as if New York, instead of Tennessee, had been the favored State?

“Your committee beg leave to illustrate, by another example, the equity of the principle which it is the object of this report to establish. Foreign commerce and the public lands are alike legitimate sources from which the United States may and do derive revenue. Foreign commerce has fixed its seat in the Atlantic States. Suppose Congress should pass a law, appropriating one thirty-sixth part of the revenue collected from foreign commerce in the ports of Baltimore, New York, Boston, Norfolk, Charleston and Savannah, to the support of common schools throughout the States in which they are situated; the other States, every person will admit, would have a right to complain of the partiality and injustice of such an act; and yet, in what respect would an act appropriating one thirty-sixth part of the revenue derived from foreign commerce to the use of schools in the six States in which it should be produced, be more partial or unjust than an act appropriating one thirty-sixth part of the public land in Ohio, Indiana, Illinois, Tennessee, Mississippi and Alabama, the six States in which the public lands on this side of the Mississippi are chiefly situated, to their exclusive benefit in the maintenance of their schools?

“Your committee are aware that it has been said that the appropriation of a part of the public lands to the purposes of education, for the benefit of the States formed out of them, has had the effect of raising the value of the residue in inducing emigrants to settle upon them. Although in the preambles of such of the acts on this subject as have preambles, the promotion of religion, morality, and knowledge, as necessary to good government and the happiness of mankind, have been assigned as the reason for passing them, and no mention has been made of the consequent increase in the value of the lands that would remain, as a motive for the appropriation, yet the knowledge, that provision had been made for the education of children in the west, though other motives usually influence emigrants, might have had its weight in inducing some to leave their native homes. If such has been the effect, the value of the residue of the lands has, no doubt, been increased by it. This increase of value, how-

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ever, has not been an exclusive benefit to the Atlantic States; but a benefit to all the States, eastern and western, while the latter enjoy exclusively the advantage derived from the appropriations of land for literary purposes. The incidental advantage of the increase in value of the public lands in consequence of emigration, if it is to be considered in the light of a compensation to the old States, must be shown to be an advantage exclusively enjoyed by them. That this, however, is not the case, is perfectly obvious, because the proceeds of the lands thus raised in value by emigration, when sold, go into the United States treasury, and are applied, like other revenues, to the general benefit—in other words, to national and not state purposes.

“It is moreover most clear that this increase of the value of lands in consequence of emigration produces a peculiar benefit to the inhabitants of the new States, in which the inhabitants of the other States, unless owners of lands in the new, have no participation. This benefit consists in the increase of the value of their own private property.

“On the other hand, it is undoubtedly true that emigration is injurious to the Atlantic States, and to them alone. While it has had the effect of raising the price of lands in the west, it has, in an equal ratio, at least, and probably in a much greater, prevented the increase of the value of lands in the States which the emigrants have left. It is an indisputable principle in political economy that the price of every object of purchase, whether land or personal property, depends upon the relation which supply bears to demand. The demand for land would have been the same, or very nearly so, for the same number of people as are contained within the present limits of the United States, if they had been confined within the limits of the Atlantic States. But the supply in that case would have been most materially different. It must have been so small in proportion to the demand, as to occasion a great rise in the value of land in the Atlantic States; for it can not be doubted that it is the inexhaustible supply of cheap and good land in the west, which has kept down the price of land on the eastern side of the Allegheny. If the Atlantic States had been governed by an exclusive, local, and selfish policy, every impediment would have been thrown in the way of emigration, which has constantly and uniformly operated to prevent the growth of their numbers, wealth, and power; for which disadvantage the appreciation

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of their interest in the public lands, consequent upon emigration, can afford no adequate compensation. It appearing then perfectly clear to your committee that emigration is exclusively advantageous to the new States, whose population, wealth, and power are thereby increased at the expense of those States which the emigrants abandoned, the inducement to emigration furnished by the appropriation of public lands for the purposes of education in the west, instead of affording a reason for confining such appropriations to that quarter of the Union, offers the most weighty considerations of both justice and policy in favor of extending them to the States which have not yet obtained them.

“Your committee beg leave to present one further reflection to the consideration of the Senate, drawn from the effect produced by encouraging learning in the Western States alone, upon the relative moral power of the Atlantic and Mississippi States. They are far from wishing to make any objection to the augmentation of the intelligence and mental improvement of the people of the west. On the contrary, they sincerely desire the advancement of their brethren in that quarter of the Union, in every thing that can strengthen, dignify, and embellish political communities. But, while they entertain these sentiments, they can not shut their eyes to the political preponderance which must ultimately be the inevitable result of the superior advantages of education there, and they must, therefore, ardently desire that the same advantages be extended to the people of the Atlantic States.

“Your committee are persuaded that, from the views which they have presented on the subject of appropriations of public lands for the purposes of education, the Senate will be satisfied that Maryland, and the other States which have not yet had the benefit of any such appropriations, are entitled to ask of the general government to be placed on an equal footing with the States which have already received them. They believe that no one, convinced of the justice of such a measure, can question its expediency ; nor can they entertain any apprehension that an application to Congress, supported by the combined influence of all the States which are interested, would fail of success. For the purpose, therefore, of drawing the attention of the National Legislature to this important subject, and of obtaining the co-operation of the other States, your committee beg leave to recommend the adoption of the following resolutions :

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“Resolved, by the General Assembly of Maryland, That each of the United States has an equal right to participate in the benefit of the public lands, the common property of the Union.

“Resolved, That the States in whose favor Congress have not made appropriations of land for the purposes of education, are entitled to such appropriations as will correspond, in a just proportion, with those heretofore made in favor of the other States.

“Resolved, That his excellency, the Governor, be requested to transmit copies of the foregoing report and resolutions to each of our Senators and Representatives in Congress, with a request that they will lay the same before their respective houses, and use their endeavors to procure the passage of an act to carry into effect the just principle therein set forth.

“Resolved, That his excellency, the Governor, be also requested to transmit copies of the said report and resolutions to the Governors of the several States of the Union, with a request that they will communicate the same to the Legislatures thereof respectively, and solicit their co-operation.”

The report of the State of New Hampshire contains the following :

“The committee to whom was referred so much of his excellency’s message, as relates to a communication from the Legislature of the State of Maryland, ask leave to report :

“That the communication submitted to them embraces a report and certain resolutions thereupon adopted by the Legislature of the State of Maryland ; the object of which is to call the attention of Congress and the Legislatures of the several States to the public lands, as a fund from which appropriations for the purposes of education may with justice be claimed by all the original States, and some of the new ones.

“Your committee have with much attention examined the grounds on which this claim is supposed to rest, and, from this examination, are satisfied that the principles contended for are just and equitable, and, therefore, do concur in the opinion expressed in the aforesaid document.”

CHAPTER V.

THE SCHOOL LANDS QUESTION CONTINUED.

The Maryland and New Hampshire communications before the Ohio Legislature.—The governor's message.—Referred to a committee.—Mr. Kelley chairman.—A communication from Vermont.—Mr. Kelley's report.—An exhaustive argument.—Rights and privileges of the several States.—Maryland's position controverted.

The Governor of Ohio with his annual message transmitted to the Legislature the report of the State of Maryland, with that of New Hampshire as an accompanying document, and introduced a discussion of the subject, which occupied a considerable portion of his message, as follows :

“ Notwithstanding that the appropriations of lands in the western country for the support of schools have, hitherto, been very little productive, as a literary fund, their advantage and value have been very highly appreciated, by a part of our brethren, in the Eastern States. A report and resolutions adopted by the Legislature of the State of Maryland, and now laid before you, will show that a claim is advanced to a portion of the public lands, in the new States and the territories, equal to one thirty-sixth part of the area of each old State, with the addition of one-fifth of that amount; to equalize, as is pretended, a participation of endowment for schools, from this fund, among the States having common property in the national possessions. The pretensions therein set forth, and supported by the State of New Hampshire, I respectfully advise, should meet the remonstrance of this Assembly, to prevent a scheme founded on principles believed to be mistaken

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and erroneous and fraught with serious wrong to this, with the other new States and the territories."

Soon after the Legislature assembled, and on the 5th day of December, 1819, so much of "the Governor's message as relates to the report and resolutions of the Legislature of the State of Maryland, together with the accompanying documents," was referred to a select committee of five, of which Mr. Kelley was chairman. During the session the Governor of Ohio received from the Governor of Vermont a report and resolutions on the same subject, and transmitted them also to the Legislature. The report contains the following paragraphs:

"And that as large appropriations of the public lands have been made by the United States (and in the opinion of your committee with perfect propriety), to certain particular States, for the purpose of education, the rights of other States will be violated, unless a like appropriation be made to them, of the public lands, for the same purpose, in just proportion.

"In those principles your committee fully agree with the Legislatures of the States of Maryland and New Hampshire, and believe the arguments detailed in the reports to the Legislatures of those States respectively, and particularly that from the State of Maryland, to be altogether unanswerable."

This report was also referred, in the Senate, to the select committee which had charge of the one from Maryland.

On the 26th of December Mr. Kelley presented the report of the committee, of which he was the author. The report is long and exhaustive—such as the gravity of the subject and the exigencies of the State required. With the exception of a few paragraphs, in

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which the "plan of distribution proposed by the Maryland report" is discussed, it is as follows:

"The committee to whom was referred so much of the Governor's message as relates to the report and resolutions of the General Assembly of the State of Maryland, with the accompanying documents relating thereto, and papers on the same subject, subsequently referred, having carefully examined the subject to them committed, respectfully submit the following

"REPORT:

"That, from an examination of the subject and documents to them referred, it appears that the object of the Maryland report and resolutions is to call the attention of Congress and the legislatures of the several States to the public lands, as a fund from which appropriations may be drawn to aid in the support of common schools, and seminaries of a higher grade. They claim from the United States for those purposes an appropriation of public lands in favor of each of the old States, including also Kentucky, equal to one-thirtieth part of their respective territories. These appropriations the report and resolutions under consideration claim as a matter of right, and which by a long course of reasoning they attempt to prove Congress can not justly refuse, and intimate that the States in whose favor the claims are set up have the power to enforce them.

"In the sentiments expressed in the Maryland report relative to the importance of a general diffusion of knowledge throughout our common country, and in many other sentiments expressed in that able and ingenious report, your committee most fully and cordially concur.

"That the public lands are a fund from which appropriations may in some manner be drawn for the purposes of education is a proposition which your committee do not at present feel disposed to controvert. But we can never subscribe to principles which would go to charge those States in which appropriations of school lands have been made as being still debtors for lands for which they have already paid more than a fair equivalent; nor can we agree to doctrines which would subject those States to contribution, on the ground of having received more than their just proportion of the public lands, when from a full and impartial investigation it will be mani-

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fest they have received far less. We believe that neither the State of Ohio nor the other States which are placed in a similar situation as it respects this question can ever be justly accused of ingratitude, for refusing to acknowledge benefits which have never been conferred, nor of unchastened ambition, in calling to mind principles which have been acknowledged by all the original members of the confederacy.

"The claim advanced in the Maryland report seems to rest on the assumed ground of a donation having been made to those States whose waters fall into the Mississippi and the Gulf of Mexico, Kentucky excepted, of one thirty-sixth part of the lands within their respective limits, for the support of common schools, and one-fifth of the same amount for the support of seminaries of a higher grade. The word 'appropriations,' it is true, is used in that report, but it is asserted that these appropriations will accrue to the exclusive benefit of those States in whose favor, it is contended, they are made; that they are appropriations for State and not for national purposes; and, it seems, are therefore considered donations to those States in whose favor they are made; and implies that no consideration or equivalent has been received by the United States for those appropriations. This hypothesis your committee believe to be founded in error; or, at any rate, to be but partially true.

"The public lands of the United States, as stated in the report under consideration, are surveyed into townships of six miles square, and each township into thirty-six sections, containing 3600 acres each; one of which sections, or section No. 16, is set apart, or appropriated, for the use of common schools; the remaining thirty-five sections are sold by the United States, and, as we contend, at an advanced price, beyond what would otherwise be their fair value; more than sufficient to pay for section No. 16. In other words, thirty-five sections, in each township, are sold to individuals, to be held in severalty; and section No. 16 is sold to the purchasers of the remaining thirty-five sections, to be owned by them, their heirs and assigns, in common, for certain purposes. Admitting this to be a fair statement of the case, as your committee believe it to be, it is clear that there is a complete purchase, made by our citizens, of the whole township, including section No. 16. And the whole superstructure, built upon the supposition of a grant or donation, falls to the ground, for the same reasoning will apply with equal force to

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the appropriations made in Symmes' and the Ohio Company's purchase for colleges, which were only greater inducements held out to larger purchasers.

"Nor is the doctrine here advanced the mere creature of imagination, unsupported by example. Similar plans have not unfrequently been adopted by individual land-holders whose minds were sufficiently enlarged and liberal to enable them to pursue successfully their own eventual interest, and the aggregate amount received by them for a whole tract has undoubtedly been increased by such partial appropriations.

"Your committee do not pretend that Congress, in the preambles of acts, have distinctly avowed, as a motive for making these appropriations, that the value of the remaining lands would thereby be enhanced; but are willing, so far as it concerns the question now under consideration, to admit that the real as well as ostensible object was the encouragement of learning; nor is it necessary, in maintaining the principles here advanced, to suppose that each individual purchaser has distinctly understood the extent and value of his right or interest in section No. 16, and that the knowledge of this right has operated as an inducement to purchase. It is sufficient for our purpose that the real value of the remaining thirty-five sections, in each township, has been enhanced by the appropriation of section No. 16, and that this has been understood by wealthy and reflecting purchasers, whose opinions and example may be said, in a great measure, to fix the price of lands; and that an enhanced price has been actually paid for the remaining lands, in consequence of the appropriation for schools.

"The committee of the Senate of Maryland seem to have foreseen this objection to their theory; and have, in their report, attempted to answer it. In doing this, they admit that the appropriation for schools may have operated as an inducement to emigration, and may thereby have raised the value of the remaining lands; which increased value, they say, inures to the benefit of the Union, and the Western States participate equally with the Atlantic States in its benefits. Admitting this position to be correct, we are unable to see the force of the deductions which they would draw from these premises. It only proves that the purchase-money, when paid, is a common fund, in which all the States equally participate; but by no means establishes the fact that all the States have contributed equally in raising this fund. If this

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increased value has been paid by our citizens, who have already purchased public lands, or it is to be paid by those who may hereafter purchase, before they can derive any benefit from the school sections, we conceive the account is thereby liquidated and discharged; our citizens have paid the full value of the grant; the Nation has received and appropriated the money for the common benefit of all; and no claim can be justly predicated on the supposition of a donation, when no such donation has ever been made.

“The grants of school lands for the benefit of the Connecticut Western Reserve, and the Virginia Military District, would, at first view, seem to form exceptions to our theory; but, if our doctrine be correct, these grants would operate in favor of the proprietors of those lands, or the holders of the warrants by which they were entitled to locate lands in the Virginia Military District, who were, at the time of making those grants, mostly non-residents; thereby enabling them to demand of purchasers a greater price for their lands or warrants, in consequence of their increased value resulting from those donations. Had the lands within the Connecticut Reserve been sold to actual settlers, or had the lands within the Virginia Military District been located and possessed by citizens of this State, these grants of school lands would undoubtedly have operated in their favor; and, so far as these lands were owned and possessed by citizens of this State, these appropriations inured to their benefit. These grants being made for the use of those districts, the proprietors, whoever they were, undoubtedly received the benefit of those donations; and at the time these grants were made, which was March 3, 1803, not more than one-tenth of the Connecticut Reserve, and less than one-third of the Virginia Military District, were owned by citizens of this State. So far as the grant of school lands for the use of the Virginia Military District operated to enhance the value of lands within that district, and thereby induce the holders of warrants to locate them within this State rather than in Kentucky, its operation was beneficial to that State, by leaving within her limits a greater quantity of unappropriated lands, subject to the control and disposal of her Legislature.

“From this view of the subject, it manifestly appears that the citizens of Ohio have actually paid for all appropriations of school lands made in their favor, with the exception, perhaps, of a small proportion of the amount granted for the

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benefit of the Connecticut Reserve and the Virginia Military District.

“In this statement, we have not adverted to the equivalent which Ohio, as a State, has paid to the United States, by exempting from taxation lands sold by them five years after the sale; the benefit of which exemption has accrued directly to the United States, by its obvious effect on the price of public lands. This exemption, as the Governor in his message has conclusively shown, is a treble remuneration for the three per cent fund, and all other grants made by the United States in our favor. It is perhaps unnecessary here to call in question the authority of the convention (who were elected for the sole purpose of forming a constitution for this State, if they deemed it expedient, and of accepting or rejecting certain propositions previously made by Congress) to submit to Congress other propositions of a different nature. For, though we believe those propositions resulted from a mistaken policy, we are not disposed, after so long an acquiescence, to dispute their obligation or complain of their hardship. But we may well protest against being still considered debtors, when we have paid a threefold price for all appropriations made by Congress for our benefit.

“But there is another view of this subject to which your committee beg leave to call the attention of the Senate. The claims set up in the Maryland report seem in some measure to rest on the following propositions: ‘That before the war of the revolution, and indeed for some years after it, several of the States possessed within their nominal limits extensive tracts of waste and uncultivated lands:’ That ‘these States were all at that epoch regal and not proprietary provinces; that the crown claimed the right, and was either directly or indirectly in the habit of granting those lands:’ That this claim was at least tacitly acceded to by the colonies; and ‘that these lands might therefore with strict propriety be called the property of the crown:’ That ‘the property and jurisdiction of the soil’ of these vacant lands ‘were acquired by the common sword, purse and blood of all the States, united in one common effort: That Great Britain, at the close of the war, ‘surrendered her right of property and jurisdiction to the United States collectively:’ That therefore these lands ought justly to be considered as the common property of the Union. Admitting these propositions to be correct, it seems to your committee conclusively to follow, that this

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claim extends equally to all the vacant and unsettled lands within the United States at the close of the revolutionary war, as well to those within the present limits of the original States as to those without or beyond those limits. Your committee do not here take into view the lands purchased of France or Spain, because we conceive they do not necessarily affect the question about to be discussed, nor the right acquired by the United States, in consequence of acts of cession made by individual States, which will be a subject for subsequent consideration.

“In order to a better understanding of the questions involved in the subject under consideration, it may be important to notice briefly some historical facts.

“At the commencement of the Revolutionary War, the original States, then colonies of Great Britain, claimed their political existence, and their jurisdiction over the territory included within certain limits, by virtue of grants or charters derived from the crown. Some of the colonies, at that epoch, included within their chartered limits large tracts of vacant and unappropriated lands; of this number were Massachusetts, Connecticut, New York, Pennsylvania, Virginia, North and South Carolinas, and Georgia. The territorial claims of these colonies, under their respective charters, were, in many instances, conflicting with each other; two or more of the colonies frequently claiming the same tract of country as coming within the limits of their charters. These charters were moreover extremely uncertain, their boundaries being so inaccurately and vaguely delineated, and founded on geographical information so erroneous that no person can now presume to attach to their descriptions any definite meaning. But a circumstance still more remarkable, and which would go far to render any claim founded on those charters at least doubtful, is that those charters, with the exception, perhaps, of those of Massachusetts, Connecticut, and Pennsylvania, were surrendered or vacated, revoked or merged in the crown long before the Revolutionary War. The colonies, or States, of New Hampshire, Rhode Island, New Jersey, Delaware, and Maryland included, within the limits of their respective charters, at the period of the Revolutionary War, comparatively small tracts of vacant lands, and some of them, perhaps, included none.

“Soon after the Declaration of Independence, these claims of some of the States to the large tracts of waste and un-

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settled lands which fell within their assumed limits seem to have formed a ground of complaint and dissatisfaction, on the part of those States whose territorial limits did not include an equal proportion of those vacant lands. While the latter States looked with apprehension and jealousy on the preponderance which the former States would derive from the immense increase of wealth and population incident to a widely extended territory, they viewed these extensive tracts of unappropriated lands as a common fund, acquired by the joint exertions and sacrifices of the whole confederacy, and which justice demanded should inure to the equal benefit of all the States. Congress, actuated by the same views, to use the language adopted in the preamble of an act of cession of North Carolina, 'repeatedly and earnestly recommended to the respective States in the Union, owning vacant western territory, to make cessions of part of the same.'

"In conformity with these repeated recommendations of Congress, and influenced, no doubt, by a sense of justice and spirit of conciliation peculiar to those days, the States claiming the most extensive tracts of vacant lands did, at various times, make cessions to the United States of such part of those lands as were not included within their present limits, with some important exceptions, and subject to various limitations and conditions.

"The States making these cessions in all cases reserved to themselves the ownership of all unappropriated lands within their present respective limits, subject in some instances to the unsettled claims of other individual States.

"Massachusetts moreover reserved to herself the ownership of all the unsettled territory included within the limits of the district now forming the State of Maine, and the ownership of soil of a large tract of country within the limits of New York. Connecticut also reserved the ownership of a tract of country bordering on the south shore of Lake Erie, and which is more than equal in extent to the whole State of Connecticut. Virginia reserved the jurisdiction and ownership of soil of all that territory which now forms the State of Kentucky, and the ownership of the whole country between the Little Miami and Scioto rivers in Ohio, or so much thereof as might be sufficient to satisfy grants made to her citizens for revolutionary services. North Carolina reserved within the territory ceded by her the ownership of soil of so much thereof as might be necessary to satisfy grants

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made to her citizens of a similar nature to those made by Virginia. And Georgia required, as a condition of ceding her claim to the territory west of her present limits, the payment of 1,250 dollars out of the avails of the first sales of lands ceded, and that the United States should extinguish the Indian title to an immense tract of country within the present limits of that State; and, moreover, make an appropriation of part of the lands so ceded for the purpose of satisfying and quieting certain claims of individuals derived from the State of Georgia to part of said lands. Conditions relating to the disposition of the territories ceded, and the rights of the people inhabiting, and the States to be formed within those territories, were also attached to the acts of cession of Virginia and the other States making the largest cessions; some of which conditions we shall have occasion hereafter to notice.

“Thus we see, that the States of Massachusetts, Connecticut, New York, Pennsylvania, Virginia, North Carolina, and Georgia, have claimed and been permitted to retain, and appropriate for their sole benefit, immense tracts of vacant lands, which, to use the language of the Maryland report, ‘were acquired by the common sword, purse, and blood of all the states, united in a common effort,’ while those States whose limits included little or no unappropriated territory, have been deprived of an equal participation in the benefits resulting from their united efforts.

“Justice, on the contrary, would have required that all the waste and unsettled lands within the United States at the date of our National Independence, as well as those within the present limits of the original States as beyond those limits, should have been considered as the common property of the American people; for all were alike acquired, by the common exertions and sacrifices of the whole nation, and no individual or community could justly have claimed a greater share or proportion than what had been actually purchased and reduced to possession.

“The people of the United States, at that period, may, with respect to this question, be considered as one great community, having equal rights and privileges, and entitled to share equally in the benefits, as well as the hardships and sufferings, resulting from the contest in which they were engaged. As the provinces ‘were regal, and not proprietary,’ in other words, as they had no just claim to the ownership of the vacant lands within their limits, it would seem to follow

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that the citizens of one State could have no better claims to unappropriated lands than citizens of another. For it will not be contended that the people of those States which included within their nominal limits vacant lands bore a greater share in 'the heat and burden of the day,' in proportion to their numbers, than the people of those States whose boundaries included no such lands.

"Notwithstanding the inequality and injustice of a contrary doctrine, and notwithstanding the indefinite and conflicting nature of the tenures under which they held, many of the States claimed, not only the waste and unappropriated lands within their present limits, but also large tracts of vacant lands beyond those limits. These claims, as we have seen, were derived from royal charters, most of which had been long before revoked, surrendered, or merged in the crown. But, at this day, and in this country, we may be permitted to question the original rights of the crown of Great Britain to the immense regions which now form the American republic, which, at the time these grants were made, were inhabited by independent nations, whose country had never been traversed, and whose very names were unknown to kings who so liberally bestowed what they never possessed. And for free and independent States to build their claims on the grants of sovereigns whose rights they deny and whose authority they disclaim, requires a course of subtle reasoning which it is difficult to comprehend. But to found those claims on charters which have long since been surrendered or revoked, appears still more preposterous.

"Admitting that the people of several colonies, at the moment of dissolving their connection with Great Britain, formed themselves into sovereign, independent communities or States, it is difficult to ascertain by what right they assumed to themselves boundaries beyond the limits of the territory actually possessed or occupied by the people of each State, or by what authority they claimed the ownership of the soil within those assumed limits, which was still waste and unoccupied, except by the natives. Should it be said that they had a natural right to assume to themselves such limits as their own moderation or their ambition might dictate, or that they still leaned on the broken reed of royal authority, to define their limits, and should it be asserted that the ownership of the soil within whose limits, or the pre-emption right thereto, is an inherent right, a necessary appendage of their

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sovereign characters (and we can conceive of no other source, from whence those claims of the original States can be derived), it then follows that the same inherent rights and appendages of sovereignty appertain to the States since formed, and which are equally sovereign and independent. For conceding the proposition, that it is incompatible with the character of a sovereign State that other States should hold lands within its limits without its consent, and this doctrine is distinctly recognized by admitting that the crown of Great Britain owned, and had the right of making grants of vacant lands, within her American colonies, or by admitting that such of the original States as included within their boundaries vacant lands, held those lands at the time of becoming independent, as a necessary prerogative of sovereignty; the conclusion from these premises, that the new States have an indisputable claim to all the unappropriated lands within their respective limits appears to us unavoidable, unless it be denied that they are equally sovereign and independent.

“The principles here advanced have been successfully asserted by the States of Kentucky and Tennessee, in the controversies between those States and the States from whose territories they were formed, relative to the ownership of vacant lands within the limits of those newly formed States. The same principle has been recognized by the United States in an arrangement made between the United States and Tennessee relative to vacant lands in the latter State.

“Again, if it be conceded that the original States which have made cession of extensive territories to the United States had a just claim to the lands or territories so ceded, which fact is tacitly admitted on the part of the United States by requesting and accepting those cessions, it follows that those States had an undoubted right to attach to their several acts of cession such conditions as they deemed proper. Conditions were accordingly attached to the act of Virginia ceding to the United States the territory north-west of the river Ohio, and which now composes the States of Ohio, Indiana, Illinois, and the North-western and Michigan Territories; one of which conditions, to use the words of the act of Virginia of 1783, after describing in what manner States were to be formed within the ceded territory, provides ‘*that the States so formed shall be distinct republican States, and admitted as members of the Federal Union, having the same rights of sovereignty, freedom, and independence as the other States;*’ another

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of which conditions, in the words of an act of the same State, of 1788, reciting the fifth article of the ordinance of Congress, of 1787, provides that, '*whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original States, in all respects whatever, and shall be at liberty to form a permanent constitution and state government.*' Similar conditions were affixed to the acts of cession of North Carolina and Georgia. It would be difficult to find words more definite or significant in their import, or expressions which would guarantee to the new States a more complete equality with the old, than those used or adopted in the acts of cession to which we have referred. We may then well question the authority of Congress to impose on the people of those States, so to be formed, as conditions of their assuming the character of distinct independent States, any terms which would circumscribe their rights of sovereignty within narrower limits than those enjoyed by the original States. For we can not admit that the privileges secured to the States to be formed out of the territory ceded by the conditions above recited were abridged by that provision in the act of cession of 1783, which provides for the disposition of the lands ceded, and is in these words: 'That all the lands within the territory so ceded to the United States (except as therein excepted) shall be considered as a common fund for the use and benefit of such of the United States as have become or shall hereafter become members of the confederation or federal alliance of the States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure; and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever.' This provision, as we conceive, can only relate to any disposition which the United States might make of the lands within the territory ceded, before the States to be formed within that territory should assume the character of sovereign States, or to such disposition as the States so to be formed might, by fair and voluntary compact, permit the United States to make of the vacant lands within their respective limits. A different construction would be incompatible with that fundamental provision of the same act of cession which provides that 'the States so formed shall have the same rights of freedom, sovereignty, and independence as the other States,' one of which rights of sovereignty, claimed and

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exercised by Virginia herself, was the ownership of all the vacant lands within their respective limits. Such a construction would also be inconsistent with that enlightened and liberal policy which governed the State of Virginia, in extending to Kentucky equal privileges, in respect to the vacant lands remaining at the time of their separation, with those which she herself enjoyed. Nor can it be supposed that Virginia would willingly permit the United States to exact from the States to be formed out of the territory ceded by her more rigorous terms than those required by her of Kentucky. But this provision of the act of cession of Virginia can, by no possibility, be so construed as to take from the States to be formed out of the ceded territory the right of taxing the lands of the United States within their jurisdiction.

“It may be contended that the States formed out of the national territory have, by solemn and express ordinance, or compact with the United States, agreed to relinquish all claims to the ownership of the soil, and the right of taxing the lands of the United States, within their respective limits. How far this assertion may be true, as it relates to the other States formed out of the territories ceded to the United States, your committee are not prepared to determine; but after a diligent search, we are able to find no such compact on the part of Ohio. The convention which formed our constitution, it is true, agreed, upon Congress acceding to certain modifications of the terms which had been previously proposed by Congress, for the free acceptance or rejection of the convention, to relinquish, in behalf of the State, the right to tax lands which might be sold by the United States for five years after they were sold. But admitting that the convention, who were elected to accept or reject certain propositions and not to propose other terms or modifications, had the power of binding the people of the State of Ohio by that agreement or ordinance, still this act goes no further than to relinquish the right of taxing the lands sold by the United States for five years after the sales. The ordinance of Congress of 1787, we acknowledge, provides that the Legislatures of those districts or new States therein described ‘shall never interfere with the primary disposal of the soil by the United States,’ etc., and ‘shall impose no tax on lands the property of the United States.’ Part of this ordinance purports to be ‘Articles of compact between the United States and people of the Northwestern Territory, and the States to be formed therein.’ But

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how a compact, which is, in other words, an agreement, and which necessarily supposes at least two contracting parties, whose assent is in all cases necessary to its validity, can be made by the sole act of one party, we can not comprehend; and we presume it will never be contended, that either the people of the territory which now forms the State of Ohio, or the State itself, has ever expressly assented to those provisions of the ordinance of 1787. Nor do we admit that Congress had authority to pass an ordinance containing the provisions above recited and thereby abridge the sovereignty of the people, after they should have formed themselves into States. The enactment of this ordinance necessarily supposes, that the States to be formed within the North-western Territory, if 'admitted on an equal footing with the original States,' and 'having the same rights of sovereignty, freedom and independence,' would have the 'right to interfere with the primary disposal of the soil;' in other words, might claim the ownership of the soil, and would also have the 'right to tax lands the property of the United States;' else where the necessity of passing such an ordinance? If the ordinance in question had the effect to circumscribe the 'rights of sovereignty' of the States to be formed within the territory north-west of Ohio within narrower limits than those enjoyed by the original States, its provisions, as we conceive, were not only impolitic and unjust, but were inconsistent with the fundamental conditions contained in the act of cession of Virginia, and therefore in no way obligatory.

"Should it be said that the people now inhabiting the States formed within the territory ceded by Virginia emigrated to this territory, and settled within its limits, under the ordinance of Congress, with the provisions of which they were presumed to have been acquainted, and that they have therefore agreed to the compact therein set forth and declared, this inference is avoided by replying that the people may with equal truth be presumed to have been apprised of the rights guaranteed to them by the act of cession of Virginia, and by the Constitution of the United States, the latter of which provides, 'that nothing in this Constitution shall be so construed as to prejudice the claims of the United States, or of any of the individual States,' thereby leaving all controversies relative to conflicting claims to be settled by the same rules of decision which had governed questions of a similar nature between the original States or between any State and the United States.

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By no clause of the Constitution of the United States have the individual States surrendered the sovereign prerogative of claiming all unappropriated lands within their limits; this right therefore appertains to them now, if they ever enjoyed it, and appertains to all the States alike, if all are equally independent.

“However these questions, which it may be said are strictly questions of right, may be determined, we conceive their decision can in no wise affect any equitable claim which the new States may have to an equal participation in the benefits accruing from the vacant or unappropriated lands, the joint property of the people of the United States. These new States are now members of the same confederacy whose bonds of union and mutual benefit embrace their older sisters. They do stand, or ought to stand, on the same footing with the original States; they are, or ought to be, equally free, sovereign and independent; and, as such, entitled to all the attributes and appendages of sovereignty which the old States are permitted to enjoy.

“The citizens of the new States are members of the same great community which includes the citizens of the old, and as such are justly entitled to an equal participation in all the benefits resulting from the confederation and which grow out of a community of interest. To deny this would be to create an invidious distinction, equally impolitic and unjust; a distinction calculated to foment sectional jealousies; to produce discontent and animosity among the several States; and finally to dissolve the ties of mutual interest and regard which bind us together as a nation.

“Let us then recur to the facts connected with this view of the subject. We have already seen that the States of Massachusetts—including Maine, Connecticut, New York, Pennsylvania, Virginia, North Carolina, and Georgia—have retained large tracts of vacant lands, after the cession made by them to the United States, which lands, as well as those ceded, justice requires should be considered as common property of the Union. From these lands have been derived funds sufficient for the entire support of schools, where they have been judiciously managed, and appropriated to that purpose. They have, moreover, been sufficient in some of the States to provide in some measure for the ordinary expenses of their government, thereby partially relieving their citizens from taxation. We admit that the States of New

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Hampshire, Rhode Island, New Jersey, Delaware, Maryland, and perhaps South Carolina, have not been admitted to an equal participation in those lands, which justice requires should be considered the common property of the Union. But their having received less than they were entitled by justice to demand by no means proves that the new States have received more. The original States, including also Kentucky, have in the aggregate participated in those lands to a much larger extent than the States which have been formed within the territories ceded to the United States. Your committee have not been able to obtain the requisite information to enable them to form an accurate estimate of the amount of vacant lands which were, at the close of the Revolutionary War, included within the present limits of the original States; and which have been appropriated by those States solely to their own benefit. The probable aggregate amount, however, exceeds one-third of the whole amount of territory comprised within the limits of those States. On the other hand, the appropriations made in favor of the States in which appropriations of school lands have been made, even admitting those school lands were gratuitous donations, amount to only one-thirtieth part of the lands contained within their respective limits. Thus it appears that those States which in the Maryland report are termed 'favored States' have in the aggregate received of the public funds only one-tenth part of the amount to which, upon principles of equal justice they are entitled. Where then, we may demand, are the exclusive privileges which have been extended to the new States (Kentucky excepted), and upon which the claims of the original States to an appropriation of public lands in their favor, are founded? While many of the old States have derived from their vacant lands immense funds to aid in the promotion of learning, in the prosecution of plans of internal improvement, and in defraying the expenses of their governments, and while all have reaped the benefit of their soil being owned by their own citizens, and being subject to contribute to the expenses of their governments, the new States (Kentucky and Tennessee excepted) have not been permitted to own one foot of the soil, within their jurisdiction, they have been compelled in their infancy to support their governments, and make necessary improvements, solely by levying taxes on their citizens, and have even been denied the right of taxing the lands within their limits. Admitting the right, we can

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not see the policy of thus denying to the new States a participation in the advantages which the old States are permitted to enjoy.

“It may be said that the new States had no political existence at the period of the Revolutionary War, that they bore no part in the expenses or dangers of that struggle which terminated in our national independence, and are therefore entitled to no participation in the vacant lands which were acquired by the joint exertions of the original States. To consider the question fairly, it is necessary to lay out of view for a moment those imaginary political beings the individual States, and consider the whole American people as one great community, by whose united exertions our national independence and all other benefits resulting from the contest in which they were engaged were acquired. If this view of the subject be correct, it follows as a fair inference from these premises, that each individual of that community was justly entitled to an equal participation in that independence and all other benefits and privileges acquired by their common efforts. We would then ask whether the citizens of the new States were not at that time, and whether they are not still, members of that community? Did not they or their fathers bear an equal share in the sacrifices, sufferings, and exertions of that day; did they not fight as bravely, bleed as freely, and open their purses as generously as did their fellow-citizens who have remained within the limits of the States which gave them birth? And have they not ever since been as ready to step forward in defending the rights and avenging the wrongs of our common country? Are they not liable to contribute in an equal proportion to the reduction of the national debt and all other burdens which the nation may be subject to bear? Where then is the justice, where is the policy, of withholding from the citizens of the new States the equal enjoyment of all the advantages which were derived from the common efforts of all? Or have they lost their birthrights, and become disfranchised, by emigration to the new States and submitting to the hardships and privations of a new country? And let it be remembered that the citizens of the new States are not colonies of foreigners who have no right to claim the privileges of American citizens.

“Upon principles of equality, justice, and sound policy, the new States may then demand that all the vacant lands within the limits of the United States at the close of the Revolution-

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any War should be considered as the common property of the nation, in which every State has an equal right to participate; with strict propriety might they say, 'Let our elder sisters, who have already received such enormous doweries, bring them into common stock; let their vacant lands be estimated; let the new States, as well as the old who have received no part of these lands, come in for their proportionate share; and we will agree to an equal distribution of this public land, to any extent which sound policy may dictate.'

"The committee of the Senate of Maryland have skillfully kept out of view the vast tracts of waste and unsettled lands which fell within the present limits of the original States, but which upon their own principles ought to be considered as common stock. It would have accorded but ill with the view of a committee, who boast of having secured in their interest more than two-thirds of the States, and a still greater proportion of their representatives, to have agitated questions so overwhelmingly calculated to disunite a confederacy.

"In dissolving the political connection which existed between the people of the States of Massachusetts and Maine, a fair and equitable division of the unappropriated lands, the common property of both, is believed to have taken place. It is also believed that Kentucky, on the separation from Virginia, retained most, if not all, the vacant lands within her limits which had been previously appropriated. These vacant lands will afford to each of these States ample funds for the promotion of literature and other purposes; while the States formed from the national territory have been set off comparatively portionless. The soil of the latter States being owned by the United States, or by non-resident individuals or communities, occasions a continual drain of money from these States, and, among other causes incident to their situation, tends to produce that extensive embarrassment which pervades their financial concerns, notwithstanding the industry, enterprise, and frugality of their citizens, and the luxuriance of the soil which they cultivate.

"No good reason can be assigned why the United States should require of the States formed within their territories more rigorous and illiberal terms, as conditions of their assuming the character of sovereign States, than those required by Virginia and Massachusetts of the States formed out of their territories. We believe the United States were not less able to be generous, and sound policy would surely have dic-

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tated a course not calculated to create invidious distinctions, and subject some of the members of our confederation to endless embarrassments from which others are perpetually exempted.

“From the view we have taken of this interesting subject, your committee conclude that, if it be conceded that the vacant lands within the United States, at the close of the Revolutionary War, were justly the property of the American people, considered as one great community, the claim extended equally to the vacant lands within the present limits of the original States. The inference, then, is irresistible that the new States, as well as the old, being members of the same confederacy, and the citizens of the new States, as well as of the old, being members of the same community, have a right to participate equally in the whole of those lands; and justice requires that the whole be considered as a common fund for that purpose. If, on the other hand, it be admitted that the original States justly claimed and held all the vacant lands within their respective limits as a right incident to their charter as sovereign States, it follows, as a fair deduction, that the new States have the same right to claim and hold all the vacant lands within their respective limits, unless it be denied that they are equally sovereign and independent with the original States, a denial equally inconsistent with justice and sound policy.

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“We should not have anticipated from an enlightened and intelligent committee, who demand justice of the new States and appeal to their liberality, an intimation of the superior power of the States which have not, as they contended, been admitted to an equal participation in the public funds with those States which they term ‘favored.’ Nor a suggestion, ‘that if they are true to their own interests they have nothing to fear.’ If power alone, or interests, is to decide the question, where the necessity of appealing to argument? and why that useless display of subtle reasoning, for which that committee seem to have put in requisition the whole force of their superior talents? Should the States attempted, in said report, to be arrayed in support of the claims therein set up be determined to enforce those claims, by numerical superiority, the new States must submit, however unjust or ill-founded those pretensions may be. But, did we not disapprove and deprecate an appeal to similar motives and passions, we might

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possibly, without the aid of inspiration, point with a prophetic finger to the time when the relative numerical strength of the parties will be changed, and say, 'with what measure you mete unto us, with the same shall it be meted unto you.' We would, however, fain believe that the force of truth and equity, though wielded by only '*seventeen*,' will be found sufficient to contend successfully with the interested claims of '*one hundred and sixty-nine*,' when founded in error.

"The Maryland report, while it professes to be friendly to the advancement of intellectual improvement in the Western States, expresses a jealous apprehension that the people of those States, in their progress to literary and scientific eminence, will outstrip the people of the Atlantic States, and thereby obtain an undue influence in the councils of the nation. We can not forbear expressing our surprise that an intelligent and liberal mind should entertain fears of the undue influence of moral or scientific improvement. But we do not hesitate to affirm that all apprehensions on this subject will vanish on a careful investigation of the relative advantages enjoyed by the Eastern and Western States in this respect. The schools, in most of the old States, are liberally endowed, or supported, by funds derived from royal or private grants or from vacant lands. The literary institutions in the new States can never entertain a reasonable hope of being thus liberally endowed or supported, unless those States can successfully assert their claim to part, at least, of the vacant lands within their respective limits. The school lands, in these States, have, as yet, been very unproductive; and, while the Legislatures of the States in which they are situated are restricted by the conditions attached to those grants, they must ever be so. Indeed, it may well be doubted whether more money has not been spent in legislating on the subject than the whole amount derived from those lands.

"Your committee are aware, that they have traveled over ground, and attempted to investigate questions which at first view may not seem to fall within the province expressly assigned them. They however thought it necessary in order to a full examination of the questions immediately or incidentally involved in the subject under consideration. Since the question of the relative rights and privileges of the several States has been agitated, it is desirable that a full and not a partial view may be taken of the whole ground; and though the committee have spun out their report to an unusual length,

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they are sensible that they have left many arguments in favor of their theory unnoticed.

"We are sensible that the new States may have been heretofore considered by some, and perhaps may have considered themselves, as minor children, who ought to feel no other sentiment than gratitude for their political existence, and who have no right to express even an opinion which might involve even incidentally the correctness of any claims of their elder sisters. It may however be important to the future welfare and prosperity of the new States to know on what ground they stand; and all questions which are calculated to create jealousy and give birth to conflicting interests among the several members of our national confederacy can not too soon be settled on a satisfactory and permanent basis.

"Your committee have endeavored to give to the subject that attentive and impartial consideration which its importance merits. They have, in the course of its investigation, referred to all the grants, charters, acts of cession, ordinances and other public documents, within their reach, calculated to throw light on the subject and lead to a correct result; and, after the most mature deliberation which time and circumstances would permit, they with much deference submit the foregoing report, and recommend the adoption of the following resolutions."

The resolutions embody the principles maintained in the report; and one of them requests the Governor to send a copy of the report and resolutions to "our Senators and Representatives in Congress," and to each of the Governors of the several States and territories, and that they be laid before their legislative bodies.

The report and resolutions were adopted by both branches of the Legislature and transmitted as requested. After that time, it is believed, the claim was not urged.

CHAPTER VI.

THE OHIO CANAL.

Mr. Kelley appointed a canal commissioner.—His report on the subject.—The considerations in favor.—The Ohio market in 1822.—Mr. Kelley appointed acting commissioner.—Proceeds to New York for study.—Examination of routes.—Preliminary surveys.—Feeding public sentiment.—The example of the Erie Canal.

The report of the Governor, made two years previous, on the subject of a canal connecting Lake Erie with the Ohio River, was very instrumental in directing public attention to that subject. And although those opposed to it were active and influential, its importance was urged with such earnestness and cogency that near the close of the session Benjamin Tappan, Alfred Kelley, Thomas Worthington, and Ebenezer Buckingham, Junior, were appointed commissioners to cause such examination, survey, and estimates to be made by an engineer, to be selected by the Governor, "as may be necessary to ascertain the practicability of connecting Lake Erie with the Ohio River by a canal through the following routes," viz: From Sandusky Bay to the Ohio River; from the lake to the river aforesaid by the sources of the Cuyahoga and Black and Muskingum Rivers; and from the lake by the sources of the Grand and Mahoning Rivers to the Ohio River.

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During the second session, that of 1822-3, Mr. Kelley presented to the Senate the report of the Canal Commissioners appointed at the preceding session, which was drawn by him. After discussing somewhat in detail the different routes they were required to examine, the general result of that examination, the prospective business of the canal, and the mode of procuring the means for its construction, are set forth as follows :

“ In a matter of such high importance to the State, nothing should be left to conjecture. The information obtained by the examinations made has disclosed the important fact that there is no doubt of the practicability of making a canal on some one, if not all, of the routes; but, until an actual location takes place, nothing like a correct estimate can be made of the expense of making a canal on any one route.”

“ The fertility of our soil promises to secure to the labors of agriculture an abundance, very far beyond any probable consumption in our territory.

“ The amount of the tonnage which this surplus may furnish for the employment of canal navigation can not be estimated by the commissioners. When the millions of acres of forest lands within the State shall become private property and cultivated farms; when our present produce shall be quadrupled in amount, its weight and its value would startle the utmost credulity of anticipation to estimate; yet wise and prudent legislators, with the experience this State has had, will look forward to such a state of cultivation and improvement, not as a visionary or uncertain speculation, but as the certain effect of existing and operating causes.

“ But the products of agricultural labor will not be the only article of bulk and value the transportation of which to distant markets will be opened by a canal navigation.”

“ The mineral coal of Ohio is another material, at present of value only in its immediate neighborhood, which by a

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canal navigation will become an important and very valuable article of exportation. To all these, the amount and value of which we know must be great, though we want the means of justly estimating them, may we not add the produce of manufactories which must spring up and flourish in a State possessing within herself, in her coal, iron ores, flax, wool, and a variety of other articles, abundant raw materials for manufacturing those fabrics of necessity and comfort with which we are now supplied from the work-shops of Europe; from whence indeed we must cease in a great measure to be supplied, so soon as the government of the Union in its wisdom shall place the American artisan on fair equal ground of competition with the foreign, in the American market."

With reference "to the ways and means of making such canal, should it be found practicable," the committee adds :

"A State government owning no funds must resort to taxation or loans for the means of carrying on and perfecting public works. If these works are of mere temporary use, like the current expenses of government, the cost of them should be defrayed by direct taxation; for it would be both unwise and unjust to burden posterity with debts contracted for objects of no use nor importance to them. But the case is far different with works of great permanent utility; and of which the ages which are to follow us on the stage of action will reap the benefit, and may well bear their proportion of the expense. The great public works in progress throughout the Union may be compared to the revolution achieved by our fathers, the expense of which is indeed a burden upon us, but a burden light and trivial when compared with the great blessings we enjoy in consequence of it."

During this session of the Legislature, Mr. Kelley also made an effort to abolish all fictions in the action of ejectment, but he could not overcome the attachment of the attorneys to useless forms and antiquated usages. This was an incipient step toward simplifying legal pro-

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ceedings, rejecting all surplusage and technicalities, and preparing the way for our present practice. It proceeded from a mind which preferred reality to fiction, and simple and clear statements to verbosity and obscurity.

The struggle for the Ohio Canal was commenced in 1819. The project then had but few supporters, but those few were among the foremost men of the State. They were men of courage and forecast. They could and did appreciate the capabilities of the State and the results which would necessarily follow from affording an opportunity for their development.

The project required courage, enterprise, and perseverance. Few now appreciate the feebleness of Ohio as late as 1825, when the law was passed providing for the improvement of the State by a canal from the mouth of the Scioto River to Lake Erie, and from Cincinnati to Dayton. In 1820, the State had less than six hundred thousand inhabitants. In 1825, its entire revenue was less than two hundred thousand dollars. The treasurer, in his report for the year ending November 15, 1825, states the account as follows :

“Amount of General Revenue Fund remaining in the Treasury on the 15th of November, 1824.....	\$63,535 18-5
The amount received for taxes, etc., from the 15th of November, 1824, to the 15th of November, 1825	131,738 47-8”
	\$195,273 66-3

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In 1822, in the interior of the State, wheat was worth but 25 cents, corn $12\frac{1}{2}$ cents, oats 14 cents, potatoes $18\frac{3}{4}$ cents, per bushel; pork 2 cents, beef 3 cents, butter 6 cents, wool 50 cents, flax 10 cents, per pound; eggs 4 cents per dozen, chickens 5 cents each: and nearly all the trading was carried on by barter. There was no manufacturing except in households and for family supplies. A few sagacious men appreciated the extraordinary productiveness of the soil of Ohio, its inexhaustible mineral resources, and its means for maintaining every variety of manufactures. But land was cheap, money was scarce, and the inhabitants were poor. The task assumed by these bold men rendered it necessary to convince this scattered population, composed of poor land-owners, that these undeveloped treasures would be so far utilized, as a necessary consequence of the proposed improvements, that their cost would not be an oppressive burden; and also, that after paying that cost they would be enriched by having their surplus products brought to the doors of the eastern and southern markets. The task was herculean, but "there were giants in those days."

On the 27th of January, 1823, a "supplementary" act was passed, in which, among other things, Micajah T. Williams, of Cincinnati, was appointed a canal commissioner, in the place of Jeremiah Morrow, who had resigned. Mr. Williams was an able and efficient collaborer in gathering facts and information on the subject submitted to the board, in molding public opinion, and

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influencing the Legislature. In pursuance of the "supplementary act," Messrs. Williams and Kelley were appointed "acting commissioners," and Mr. Kelley was directed to proceed to New York, "in the spring, in order to collect such information as might be obtained from an actual inspection of those works [the New York canals], parts of which were then in different stages of construction, from the first breaking of the ground to their completion."

In pursuance of this direction he proceeded to New York, examined their canals, consulted with the different officers having charge of them, and procured all the information which could be obtained in regard to the work generally and in all its details. This examination enabled the Ohio commissioners to avoid the errors and improve upon the methods of those of New York. That they did so is made evident by a comparison, which shows that the Ohio canals, from Cleveland to Portsmouth, and from Cincinnati to Dayton, were as thoroughly built as those of New York, and much more economically.

In June the commissioners met, and directed a survey and location of a route from Sandusky, south, by the Miami and Scioto Rivers. Subsequently, similar work was done on two other lines, one between the Sandusky and Tuscarawas routes, and the other on the line of the present canal. The results are fully and clearly stated in the report made January 21, 1824. The commissioners premise their account of the work done on the sev-

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eral lines by stating the principle which governed them in their examinations and conclusions :

“In determining on the location of a canal route, the members of the board have uniformly felt disposed to yield something of their local sentiment and wishes, in order to unite cordially in accomplishing an object which they deem essential to the honor and prosperity of the State, and we have the satisfaction of saying that there has been a concurrence of opinion in the direction of all our principal operations.”

In order to appreciate the labors of the acting commissioners in making these preliminary surveys, all of which were done under their personal supervision, it is only necessary to open their report :

“Our general plan of operations was very much deranged by the extreme unhealthiness of the season. Few of the men employed to make up the necessary parties were able to preserve their health or continue their service more than a week at a time.”

One engineer died, and the others were unable to go through the season, with the exception of Samuel Forrer, who left for a short time and returned. He also suffered much “from exposure and the sickliness of the season.” The examinations were conclusive against the Sandusky route, as it clearly appeared that water could not be supplied at the summit except at an expense which prudence forbade to be incurred.

Public opinion was not yet ripe for the adoption of any route, and, after giving a detailed account of the work done during the year, the commissioners add :

“Few things contribute so much to the honor and prosper-

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ity of a State as a strong attachment of her citizens to their country, to its government, its institutions, and its character. This is the secret chain which binds together in one great family the numerous individuals of which a State or a Nation is composed ; the secret spring which makes them alive to the general interest of the community, to its honor and reputation, and ready to make personal sacrifices for the promotion of public good.

“Without this feeling, a State is composed of a multitude of uncongenial spirits, held together rather by necessity than from choice, and continually neutralizing any effort which may be attempted, by clashing interests or jealous animosities.

“No nation has ever become great without some national character ; some general affections of the people ; some object to excite the pride of her citizens. Perhaps no better method can be devised to accomplish this object than to design and pursue with stability some leading measures of state policy ; some great work which will call forth the exertions, concentrate the affections, of her citizens, and even flatter their laudable ambition ; some effort in which all may feel a common interest ; some achievement which will cause a glow of exultation in every bosom, at the thought of belonging to a State that has merited the admiration of the world.

“Though the construction of the great canal of New York is a work so grand and imposing, its advantages to the public are not less apparent. The benefits which have already resulted from that work, although it is not yet completed, are so great as to stagger belief, if they were not capable of proof amounting almost to mathematical demonstration. That every saving in the expense of transporting the surplus productions of a country to market is just so much added to the value at home is a proposition too evident to require proof, and too plain to need illustration. We accordingly find that any article designed for a distant market increases in price, where it is produced, in exact proportion to the diminution in the expense of conveying it to its place of destination, unless affected by accidental circumstances. Taking this rule as a criterion, it is ascertained by information derived from authentic sources, that on the productions of the country exported from the single county of Monroe, situated on the Genesee River, in New York, and the property received in return, more than two hundred and seventy-five thousand

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dollars was saved during the last season; in other words, so much money was put into the pockets of those who raised that produce for market and those who received such articles as they needed in return. This benefit has resulted solely from the Erie Canal, and the sum thus saved to a small section of country would more than pay the interest for one year on all moneys expended in the construction of all the canal lines in that State which were then completed. This fact alone speaks volumes in favor of canal navigation, and ought to carry conviction to the mind of every reflecting man.

"Many people seem to think that every dollar expended in public improvements is so much lost to society; that it is annihilated, gone out of existence never more to return. Such opinions are founded in error. Even public works which are erected for mere show and ostentation, which afford no profit and are of no practical benefit when completed, do not necessarily diminish the wealth of the community by whom they are constructed; if, to effect these objects, the rich are taxed, money is drawn from the secret recesses in which it has long lain useless, the labor of those who would otherwise have remained idle is put in requisition, and by this labor alone the work is erected; for the money still remains in the country, but has only changed hands, generally for the better. If, then, a work useless in itself does not necessarily detract from the wealth of the community, one of great public utility can hardly fail to add to that wealth. It is believed by many men of extensive knowledge and enlarged political views, in New York that the construction of their great canals would be beneficial to that State, even admitting those works to be abandoned the moment they are completed. Such has been the general spring given to industry, such the amount of labor put in requisition which would not otherwise have been called forth, such the benefit arising from the distribution of money in the best possible manner, that the inhabitants are now better able to pay the interest on all moneys borrowed for that work, than they would otherwise have been to pay their ordinary tax without it. But fortunately this is not required of them. They now reap the benefits of that magnificent undertaking, without even feeling that they are taxed to pay the interest of the moneys expended in its construction. When, we may ask, was a nation ever impoverished, in consequence of the construction of works which had for their object public utility or convenience? We may safely chal-

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lenge the history of the world to produce an example of this. Perhaps nothing has so much contributed to national wealth and prosperity as the construction of roads and canals. They not only add to the value of the articles transported on them, but give a powerful stimulus to industry, by increasing its profits. Let it also be remembered that, as we reduce the labor expended in the transportation of any article, there remains so much more which may be applied to the production of that article.

“A nation is not always rich in proportion to the gold and silver in her possession ; but in proportion to the productive industry of her citizens. Spain and England are examples of this ; the one, possessing for centuries the exhaustless mines of the new world, has been continually poor ; while the other, without a single mine of gold or silver, has been able, from the industry of her citizens, to subsidize kingdoms and wield at pleasure the destinies of Europe.

“If ‘population be strength and industry be wealth,’ as has been justly said, Ohio even now is both powerful and rich. Possessing a free population of 700,000 inhabitants, more than 100,000 of whom are men able and willing to labor, we ought rather to ask, ‘What can she not do?’ than doubt her ability to perform the work proposed.”

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CHAPTER VII.

CANAL COMMISSIONERSHIP.

Locating canal routes.—The commissioners' report.—Two routes proposed.—The question of expense.—A public debt.—The Muskingum and Scioto route authorized by the Legislature.—Mr. Kelley's forecast, sagacity, and prudence.—Appointment as canal commissioner.—Three dollars per day.—The work commenced.—Health impaired.—Report for 1825.—Cost of the work.—Effect of the canals.—Mr. Kelley's resignation as acting commissioner.—Proposed inquiry into the accounts.—The form of the proposal resented.—Mr. Kelley's methods of management.

In the year 1824, in pursuance of the act of the previous General Assembly, and of the acts to which that is additional, the Board of Canal Commissioners examined a number of routes, and not only located them but estimated their cost. Their report, which was made on the 8th of January, 1825, was full and complete. Their mode of proceeding and the different routes were so clearly and fully described, and the estimated cost was so plainly stated, that it was unnecessary to look beyond the report for the means of determining what line should be adopted. The wise prudence of the State and the care and skill of its agents clearly appear in the opening paragraphs :

“To enable the board to complete, in one season, the location of two entire lines across the State, as was required by the last General Assembly, it was deemed necessary to form

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two exploring and locating parties for that service. At the head of one of these parties they placed Mr. Samuel Forrer, whose persevering enterprise and skill had already given him strong claims to the confidence of the board. The earliest measures were taken to obtain the services of another engineer, whose experience and activity should qualify him to take charge of the second party. After some delay, they succeeded in obtaining for that station Mr. William H. Price, of New York, a gentleman of considerable experience in the construction of canals, who came highly recommended from that State. Since he has been in our service, he has given satisfactory evidence of his skill and experience in the line of his profession, and of his future usefulness to the State, should the construction of her proposed canals be undertaken.

“They also made application to the Board of Canal Commissioners of the State of New York, as directed by the act of Assembly, for one of their most experienced and approved engineers, for the purpose, during the latter part of the season, of revising and aiding in making the different plans and estimates of the cost of constructing a canal on the lines located.” . . . “This application resulted in the employment of David S. Bates, Esq., one of the principal engineers of the New York Canal, who has been engaged in the construction of that work from its commencement. Judge Bates arrived in this State about the first of September, since which time he has revised the whole of the lines which have been located.”

After describing the different routes, and giving a detailed statement of their cost as estimated by the engineers, Forrer and Price, and revised by Judge Bates, the report continues as follows :

“The commissioners, from a full view of the subject, and an examination of the estimates, which will be laid before the General Assembly, are of opinion that it is practicable to make canals, from the Lake to the Ohio River, upon two of the routes which have been surveyed ; one commencing at the mouth of the Scioto River, and passing by the Licking summit and the Muskingum River, to Lake Erie. And the

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other from Cincinnati to the foot of the Rapids of the Maumee River; both of which are of unquestionable importance and ought to be made by the State, as soon as the necessary funds can be obtained and the wants of the people require them.

“They recommend therefore the passage of a law authorizing the construction of the first mentioned line of canal and so much of the second, as extends from Cincinnati to Dayton, and providing necessary funds therefor; leaving it to succeeding Legislatures to determine when it will be expedient to complete the western line, to the foot of the Maumee Rapids.

“Were the resources of the State adequate to the present construction of both canals, it might be expedient to undertake them at the same time. But, while we believe that the resources of the State are fully adequate to the construction of one entire route, we deem it highly impolitic to undertake both at once. Such an undertaking would not only subject the people of the State to burdens greater than they would cheerfully bear, but it could hardly fail to injure the credit of the State abroad by inducing capitalists to believe that we were attempting exertions beyond our strength, and that our councils were not governed by sound discretion.

“If then it is imprudent to undertake the construction of two entire lines of canal from the lake to the Ohio River, at the same time, the question recurs—which line shall be first constructed?

“In settling this important question, we are aware that local feelings and sectional interests will arise, and interpose their influence, in a greater or less degree. If these feelings and interests are suffered to govern, no favorable result can be expected. In all states or communities, whether great or small, many improvements are suggested which require the joint exertions of all. If all these improvements must be accomplished at once, or not at all, the inevitable consequences would frequently be that nothing could be done, the strength of the State being inadequate to the simultaneous construction of so many works. It then becomes indispensably necessary to the progress of improvement that in many cases the interest of one section of the country or class of society be postponed to those of another. In all those case, those improvements which interest the greatest proportion of the community, which will be the most extensively useful, in proportion

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to the difficulty of their attainment, and for which there is most urgent necessity, should be first accomplished.

“In reference to the question under consideration, it will be observed that the Muskingum and Scioto route passes through the State, nearer the center, and so as to divide its territory much more equally than the Maumee and Miami route; and will therefore accommodate a much greater proportion of its area and population.”

The report contains the following paragraphs in relation to procuring funds for the construction of the canal, and the revenue system then in force :

“By our report to the last General Assembly, it was seen that sufficient funds might be obtained upon loan, and on favorable terms, for the purpose of constructing a canal; and subsequent information has fully confirmed the favorable conclusions then made upon this subject. For the commencement and completion of these works, it is believed that the State must necessarily borrow all or nearly all the sums wanted. The history of government debts is not likely to make very strong impressions in their favor, for, with few exceptions, they have usually been contracted for objects totally adverse to the best interests of society. A public debt is, doubtless, a great evil to any State upon which it may be imposed, if the money obtained by contracting it has been wasted; but societies, as well as individuals, may wisely contract debts, and leave them a charge upon their posterity, if they leave to that posterity in the estates purchased, or improvements made by the moneys so procured, an ample patrimony to discharge them. Such, it is believed, would be the case with a debt contracted for the purpose of making the proposed canals; for, with a prudent and economical expenditure in making them, the capital vested will be worth more when they shall be completed, even as merchantable stock, than they will have cost; and will increase in value while the population, wealth, and business, not of this State only, but of the immense regions made accessible to each other by them, shall continue to increase. A debt therefore contracted for such purposes can not be objectionable if the State possess the ability to pay the interest of it.”

“But the present system of taxation, although adequate to

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the support of government, and although it may afford a surplus applicable to other objects, is extremely unequal, and of course inequitable in its operation. It is unequal as a tax upon land, because land worth fifty cents or a dollar per acre is charged from twenty to a hundred fold more, in proportion to its value, than land which is worth twenty dollars and upward; and this inequality can not be remedied by the present system without increasing the rates of land, and devising some plan which will secure the correct entry of all lands upon the tax lists. If the position be admitted that the necessary expenses of the State should be contributed by all the citizens in proportion to their property, then the land tax, as an exclusive source of revenue, is still more unequal and oppressive, in as much as it leaves exonerated from the burden of taxation a great and increasing mass of personal property; property, too, from which in general a greater profit is derived by its owners, and consequently a greater ability to share the public burdens."

After a tabular statement showing the probable sum which will be required each year, with the amount of interest to be provided, the following statement is made :

"The business will gradually increase on the canals as the lines of commercial intercourse become known and established, and as the surplus productions of the soil are augmented by the stimulus produced by an easy access to a safe and certain market; so that in the year 1837, the net income of the canals will pay the interest on all sums borrowed for their construction. After which time, the increase of business and revenue on the canals will yield a surplus fund for the redemption of the loans."

On the 1st of February, 1825, an additional report was made containing a detailed statement of the expenses of the commissioners in making their examinations, surveys, and estimates, and in regard to those expenses, it is said :

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“We believe that the history of canaling furnishes no instance of an equal length of line having been located, and the expenses of constructing a canal thereon estimated, in the same length of time, nor at so small an expense. There was located in New York, in the year 1816, about four hundred miles of canal line. This was accomplished for sixteen thousand nine hundred and thirty-seven dollars—a sum nearly equal to the whole cost of our examinations, surveys, and locations for three years; in which eight hundred miles of line have been actually located and staked out on various routes, and at least two thousand miles of random leveling have been performed.”

On the 4th of February a bill drawn by M. T. Williams, then Speaker of the House, “To provide for the internal improvement of the State of Ohio by navigable canals,” and which authorized the commissioners therein provided for to construct a canal on the Muskingum and Scioto route from the mouth of the Scioto River to Lake Erie, and also a canal on so much of the Maumee and Miami line as lies between Cincinnati and Mad River, at or near Dayton, was enacted, signed, and became a law.

The reports preceding this law bear upon their face the indelible impress of Mr. Kelley’s forecast, sagacity, and judgment. They did much to form public opinion, and induce the Legislature to regard the enterprise as essential to the rapid settlement of the State, the development of its mineral and agricultural resources, and that it was then able to undertake the work. Its success was, however, a matter of judgment, and not a certainty, and the Legislature felt the responsibility it assumed; and on the same day that the law was enacted, a joint

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resolution was adopted appointing the following Board of Canal Commissioners: Alfred Kelley, Micajah T. Williams, Thomas Worthington, Benjamin Tappan, John Johnson, Isaac Miner, and Nathaniel Beasley.

Mr. Kelley had identified himself with the project from the beginning, including the surveys, locations, and estimates, and now, when the work was to be actually undertaken, and the faith of the State was pledged for its cost, the State called upon him to realize for her the results which had been so clearly stated and so confidently urged. He accepted the trust, and staked his reputation upon the issue.

When he accepted the office of Canal Commissioner, he had a leading and a lucrative practice as a lawyer, and a home on the bank of Lake Erie, in Cleveland. They were both entirely abandoned for the responsibility, privations, and danger to health, and even of life, which were necessarily incident to such a work. If selfish ambition or avarice ever influenced his conduct, or for a moment had a lodgment in his mind, the State, at this period would not have commanded his services. The maximum of compensation allowed by law was three dollars per day. This was to him no compensation present or prospective. He was solely influenced and controlled by the hope and belief that when the work should be completed, a lasting benefit would be conferred upon his adopted State, and the consciousness that all his sacrifices would be made for the benefit of the public. When the work was commenced, he was in the prime of life, pos-

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sessed of a strong constitution, and unimpaired health. His success and prosperity were assured. He sacrificed the income from his profession, abandoned his pleasant home, and separated his family, that he might engage in this important and perilous work.

Immediately after the appointment of the commissioners the Board was organized, and Mr. Williams and Mr. Kelley were appointed acting commissioners. Preparations were soon made for putting under contract "the line on Licking summit." In the report made the 10th of December, 1825, the Board refers to the commencement of the work as follows:

"About to commence, in behalf of the people of the State, the construction of the second great national work of internal improvement in the United States, and recollecting the debt of gratitude which is due, for his able and effective services in the cause, to that distinguished individual, the acknowledged head of the policy which is so happily extending itself throughout our common country, and remembering, also, the deep interest which he has in all cases evinced, in the success of the efforts of Ohio, the commissioners felt it to be a mark of respect due, and that it would accord with the feelings of their fellow-citizens to invite Governor Clinton, of the State of New York, to be present at the important and interesting ceremony of commencing the work. They were highly gratified at his acceptance of the invitation, and with the prompt manner in which he encountered the difficulties of complying with their wishes."

"On the fourth day of July, the Board had the satisfaction of witnessing the commencement of the work, in the presence of our patriotic Chief Magistrate, who had also been invited to be present on the occasion, and of Governor Clinton, together with several citizens of New York, distinguished advocates of the policy, and a vast concourse of their fellow-citizens."

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A long portion of the line under Mr. Kelley's supervision ran through a wilderness or sparsely settled country, in relation to which it is said in the report of January, 1827: "During the months of July, August, and September, the work could not be prosecuted except at a great sacrifice of the health and life of the laborers, and was therefore suspended." It would be difficult to convey an adequate idea of the fatigue and exposure to which the acting commissioner was subject in the discharge of his duties. Appointments were always kept, though it often required that his days should be spent in storms and in bogs and miasma.

While acting in behalf of the State, and exposing his health to secure her against loss or unnecessary expense, Mr. Kelley was equally careful and considerate of the rights of the laborers, whose "reward of their services" was secured not long after the commencement of the work. In the third report, the Board says:

"The measures which have been taken by the acting commissioners to secure to laborers on the canals the just reward of their services have produced a beneficial effect, particularly on these parts of the line which have been put under contract since the adoption of these measures. The right reserved by the acting commissioners, in the contract, of withholding moneys from the contractor, and paying over to the laborer directly the sums due him for work, whenever a disposition on the part of the contractor not to make punctual payments is evinced, has had the effect to introduce greater punctuality in the payment of laborers.

"Still, however, instances occur in which all the exertions of the acting commissioners have failed to produce the desired effect. The neglect of laborers to use suitable exertions and to take the necessary measures to insure the payment of

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their wages, or even to inform the commissioner of a failure in this respect, until it is out of his power to coerce payment, together with the want of economy and bad management on the part of the contractor in some instances, are the principal causes of the existence of the evil; an evil which it is extremely difficult, if not impossible, entirely to prevent."

After five or six years of exposure and uninterrupted labor, Mr. Kelley's vigorous constitution yielded to their influence, and his health was so far impaired that the Legislature, in February, 1832, passed the following preamble and joint resolution:

"Whereas, the health of Alfred Kelley, acting commissioner of the Ohio Canal, has been seriously impaired by his constant attention, for several years past, to his arduous duties as acting commissioner, so that he is now unequal to the labor of his station; therefore, as a tribute of respect to a faithful public servant—

"Resolved by the General Assembly of the State of Ohio, That Alfred Kelley, acting canal commissioner, be allowed leave of absence from his official duties until the first day of July next."

Mr. Kelley did not avail himself of this offer, but, by care and prudence, was enabled to regain a little of his former health and continue to perform his official duties.

During the year 1832 the two canals committed to the charge of the commissioners by the act of February 4, 1825, were finished, "with the exception of the lower lock at Portsmouth, the southern terminus of the Ohio Canal, and the locks by which the Miami canal was to be connected with the Ohio River at Cincinnati." At this time, the health of Mr. Kelley had so declined that

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the commissioners held their meetings at his house in Columbus; and he there, in January, 1833, prepared the report for the preceding year.

In that report the construction of the canal is reviewed—a short account of the levels, locks, aqueducts, culverts, feeders, reservoirs, is given; and, in an appendix, a copy of the rules and specifications, adopted for the various kinds of work, is furnished. Being also desirous of making a full financial exhibit of the work on the Ohio Canal, the estimated and actual cost are carefully compared. No such comparison could be made in regard to the Miami Canal, as the estimate was made of the entire line, from Cincinnati to the Maumee River, and no separate estimate was made of its cost from Cincinnati to Dayton.

The cost of the Ohio Canal, as estimated in the report of 1825, was \$3,081,880.83.

There was actually disbursed on it, including the amount then due to contractors—the estimated cost of finishing the lower lock at Portsmouth, and the expense of engineering and repairs, \$4,224,539.64.

A large portion of this excess of the cost over the estimate is accounted for in detail, with a full explanation of each item, and is then aggregated as follows :

- | | |
|--|--------------|
| “1. Extension of the canal—new branches,
feeders, regulators, and other new works,
as previously stated, ... | \$218,675 76 |
| 2. Modifications of the plan, as stated, ... | 120,711 67 |
| 3. Changes of location to sustain local inter-
ests, ... | 31,274 21 |

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4. Additional embankment, ...	\$150,000 00
5. Filling and securing canal after acceptance from contractors, ...	100,000 00
26. Ordinary repairs from July, 1827, to December 1, 1832, ...	55,000 00
	\$675,711 64"

This sum, deducted from the actual cost, leaves, as the excess of the cost over the estimate, \$487,947.17.

An additional statement is then made in the report, as follows :

"This excess is in part attributable to the influence which the making of the canal has had on the commercial and agricultural prosperity of the State. As different portions of the canal, from time to time, have been opened for navigation, a channel has been presented to the inhabitants of the interior for the cheap and convenient transportation to market of the products of their farms, their forests, and their mines. Labor has consequently yielded a greater profit, and both provisions and wages have risen in value. This state of things has necessarily increased the expense of constructing the canal, and yet it has operated beneficially to the people of the State. For, while the cost of the canal has been enhanced, the excess has been paid to them for their labor and provisions, and the surplus sent abroad for sale has been at the same time increased in value, in consequence of the diminished expense of transporting it to market.

"The increased amount of money which has been thrown into circulation by the heavy disbursements on the public works has also had an effect to raise the price both of labor and provisions.

"The extensive works of internal improvements which have been prosecuted with so much energy in the adjoining States, particularly in Pennsylvania, and by the national government in our own State, have drawn off a great number of mechanics and common laborers, who otherwise would have sought employment on our canal, and have consequently enhanced the price of labor, the cost of the canal, and at the same time have retarded its completion.

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“The frequent abandonment of jobs by contractors, in some cases from dishonest motives, but much more frequently from errors in judgment as to the value of work, or as to their own skill and ability to perform it with economy, leading them to contract at prices below those at which *they* could complete it without serious losses, produced the necessity of frequent re-letting at rates above the actual value of the work. This consequence resulted from the limited time in which the public interest required the completion of these jobs at the time of their being re-let, and the scarcity and high price of labor attendant upon the extraordinary exertions necessary to accomplish a large amount of work in a short period.

“The prices fixed on the work of various kinds in the original estimates were generally sufficient to cover the expense of its execution, but the quantities were in *many*, indeed in *most*, cases materially deficient; and experience has shown that a far greater amount of work was necessary even to finish the canal on the plan originally designed than was then estimated.

“In relation to this subject, it should be observed, that the surveys on which the first estimates of cost were formed were made in a much more hasty and consequently less perfect manner than would have been required to serve as a basis of correctly estimating quantities, or than would have been done had more time been given.

“During the season in which these surveys were principally made, upward of six hundred miles of canal lines were located by two parties. Under these circumstances, minute examinations and surveys could not be expected. They were in fact mostly confined to ascertaining the elevations and depressions of the surface on a longitudinal line along the center of the ground proposed to be occupied by the canal; and even on this line the smaller irregularities of the surface were not ascertained. The result of forming an estimate from such imperfect surveys was that the quantities of earth necessary to be removed in order to construct the canal were much underrated, particularly on uneven and sideling grounds. In a hasty estimate, predicated on such imperfect surveys, many structures of various kinds, necessary to render a canal substantial and convenient, were either entirely omitted, or small and cheap works were supposed to be sufficient where subsequent examination has shown that much larger and more expensive structures were necessary. It is, however,

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probable that much of this additional cost would have been covered by the very liberal prices generally affixed, in the first estimates, to the work, had the prices of labor and provisions remained as they then were. But this state of things, owing to the causes previously noticed, did not continue to exist."

No canal in this country or in Europe of equal length had been constructed at as small a cost per mile, or at so small an advance on the original estimate, if it can be fairly claimed that the cost of the Ohio Canal was not within that estimate.

The predicted results of this great enterprise were more than realized; and its success exhibits extraordinary sagacity and forecast on the part of its advocates, especially when the condition of the State in 1825 is considered. In 1832, the tolls amounted to \$123,794.21. They increased rapidly each year, and in 1837 amounted to \$355,769.50.

The report of 1832 also contains a table exhibiting the different articles transported on the canals, with the amount, price, and value of each, and the "aggregate saving in expense of transportation" on both canals is shown to be \$312,156.87. This amount was increased every year in proportion to the increase of transportation.

The general effect produced upon the State can not be better illustrated than by a comparison of the appraised value of real estate for the purpose of taxation, at different periods.

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Prior to 1826, lands were assessed for taxation by the acre, and not according to their value.

In 1826, the realty of the State was valued at \$15,946,840.

In 1835, it was valued at \$75,760,797.

In 1841, it was valued at \$100,851,837.

This extraordinary increase was caused by the enhanced value of farming products; which in 1832 were brought, by the canals, within the reach and influence of the New York and southern markets.

In a report of Joseph S. Lake and N. H. Swayne, as Canal Fund Commissioners, on the 20th of January, 1842, they refer to this subject as follows :

“The Ohio Canal has again netted exceeding six per cent upon its cost. . . . It should be constantly borne in mind, however, that the revenue derived from such works, however important to the public treasury, is a very small part of the benefits they confer. The rapid growth of Ohio, in population and resources, since the census of 1830, must be attributed mainly to this cause. There is every reason to anticipate the like growth for some years to come.”

Mr. Kelley continued to discharge the duties of acting commissioner until 1834, when he addressed the following communication to the Board :

“COLUMBUS, 24th Jan’y, 1834.

“*To the Board of Canal Commissioners :*

“GENTLEMEN :

“I deem it proper to inform you that I have concluded to resign the appointment, which I now hold from the board, of acting commissioner, as early as the first day of March next ; and I make this communication, at this time, that the board

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may have an opportunity to make the necessary arrangements for supplying the place.

"Had I consulted my own inclinations, or the wishes of my family only, I should have taken this course some years ago. I was, however, unwilling to abandon a trust which I had undertaken to perform, particularly when the discouraging circumstances and serious difficulties with which we were surrounded might induce the belief that I was impelled to do so by despairing of ultimate success. The opinion expressed by the board that the knowledge which I have derived from personal observation and experience was important to a successful prosecution of the work operated as a further inducement to continue in the station assigned me.

"As the canals are now so nearly finished, and as the successful execution of the public works in which we have been engaged, their widely extended benefits and increasing profits, have settled public opinion in their favor, I can now retire from active service without discredit to my motives, or injury to the public.

"I am more strongly impelled to take this step by a conviction that an efficient superintendence of the Ohio Canal requires the undivided attention of an acting commissioner, and demands the employment of a much larger portion of his time on the line than I can employ in that manner, with due regard for my health, impaired as it has been by continual exposure and unremitted exertions for seven or eight successive years.

"In conclusion, permit me to express my grateful sense of the manner in which I have been sustained by the board in the performance of my duties, and of the confidence which they have placed in me during the time I have acted as their agent.

"With sentiments of the most sincere regard,

"I am, gentlemen, your humble serv't,

"ALFRED KELLEY."

Mr. Kelley remained in the Board, as commissioner only, after the time specified in the preceding communication. Having resigned as acting commissioner, it was due to him and the State that his accounts should be examined and reported upon. In pursuance of this ob-

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ligation on the part of the State, the House of Representatives of the next Legislature, on the 7th of March, 1835, passed a resolution providing for the examination of the "books, vouchers, and accounts," and "all the official transactions of the Board of Canal Commissioners of this State, and also of the Canal Fund Commissioners, from the commencement of our canal improvement up to the present time." In addition to the ordinary provisions, the resolution conferred the extraordinary power "to send for persons and papers."

Mr. Kelley immediately prepared the following paper, which was signed by all the members of the Board then in Columbus, and delivered to the House on the 9th of March; and in regard to which one of the Board, Mr. Samuel Forrer, in calling the attention of the writer to it, says: "Its character shows his manner of meeting issues of the kind involved in the controversy; and the result shows what an indomitable will in defense of justice may effect, even on a legislative body:"

"To the Honorable the House of Representatives:

"The undersigned, members of the Board of Canal Commissioners (being all the members of the Board now in Columbus), have learned with much surprise that the House have passed a resolution requiring the appointment of a committee to examine the accounts, vouchers, conduct and proceedings of the Canal Commissioners and of the Commissioners of the Canal Fund, *with power to send for persons and papers.*

"The undersigned believe that it is not in accordance with parliamentary and legislative usages to clothe committees with extraordinary power, unless the Legislature, or the branch from which such powers may emanate, have strong presumptive evidence that some misdemeanor or some malfeasance

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in office has occurred the investigation of which requires the examination of witnesses and papers that can only be obtained by compulsory process. If this view of legislative usages be correct, it must be evident that the passage of the resolution in question carries with it the declaration that the House have strong reasons to believe there has been some gross malfeasance practiced by the agents of the State whose official conduct it is proposed to investigate, or that some parts of the accounts or vouchers, or evidence of some of their proceedings, will be improperly withheld from the inspection of the committee.

“Although the members of the House may individually understand, from declarations made on the floor, that no such imputations are intended, a little reflection will satisfy the House that the community at large, who have not heard these declarations of members, must judge of the subject from the tenor of the resolution itself when construed according to the established usages of legislative bodies; and that the character of the agents whose conduct is to be investigated must suffer these implied imputations until a report can be made at the next annual session of the General Assembly.

“Had the resolution in question received the sanction of both branches of the General Assembly, the undersigned could have no hesitation as to the proper course to be pursued. They could not for a moment consent to hold a trust, after the representatives of the people had expressed, even by implication, doubts as to their being worthy of confidence. How far a similar course is required, when but one branch of the General Assembly has adopted a measure which, according to the ordinary rules of construing such proceedings, implies a want of confidence in the integrity of agents who have been appointed by the joint act of both branches, presents a more difficult question.

“Under existing circumstances, the undersigned deem it a duty which they owe to themselves, as well as to those who have acted with them, and who are now absent, to the public and to the character of the State, respectfully but earnestly to solicit an unequivocal expression of the House, in relation to the construction of that part of the resolution which, as it now stands, the undersigned believe may and will, by many, be construed to imply suspicion of their official integrity. An explicit declaration of the House, either one

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way or the other, on this point, will at once relieve the undersigned from their present embarrassment, and determine them as to the proper course for them to pursue.

"The undersigned, for themselves and in behalf of their absent colleagues, beg to be distinctly understood as not wishing to avoid a full and rigid scrutiny of their accounts and official conduct. They indignantly repel every intimation of a desire on their part to shrink from an investigation of their proceedings. They earnestly wish, and respectfully demand, a full, minute, and rigid investigation of all their accounts, vouchers, and whole official conduct. But at the same time, they solemnly, but respectfully, remonstrate against the entering upon the journals of the House, and publishing to the world, of a document which implies the possession of strong presumptive evidence of fraud or official misconduct, unless the House have such evidence in their possession, or unless some member shall, upon his official responsibility, declare that he has good reason to believe that such fraud or misconduct has actually occurred.

"The constitution and laws of our State secure from search the persons, houses, papers, and possessions of private citizens, without, at least, probable evidence of crime. So careful were the framers of our constitution and laws to prevent a wanton invasion of the character or property of our citizens; and we are reluctant to believe that a branch of the General Assembly will cast an imputation upon the character of public officers, who have a right to demand protection at their hands, by a deliberate public act, unless there are, at least, strong reasons to suspect official misconduct.

"The laws of the State require that the accounts and vouchers, both of the canal commissioners, and commissioners of the canal fund, shall be filed in the Auditor's office, and that they shall, from time to time, report their official proceedings to the General Assembly. These requisitions of law have been complied with, and it is well known that these accounts and vouchers have long been, and are now, in the office of the Auditor, recorded in books prepared for that purpose, and subject to the control of the General Assembly and to the inspection of its committees. The proceedings of the Board of Canal Commissioners are recorded, and subject to the same control and inspection. The accounts of both boards have been uniformly closed for each year in time for the examination of the committee of either or both branches

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of the Legislature, and, previously to the last session, have uniformly been examined by the committees of both Houses. It is not the fault of the commissioners that this service has not since been performed; the accounts have been prepared in season, and the committee, or members thereof, notified that they were in readiness to be submitted.

"The amount of money which has come into the hands of the canal commissioners, or the commissioners of the fund, can be readily ascertained; and they are bound to account, and that too in a satisfactory manner, for its disbursement. If they fail to do so, they will be obnoxious to censure. But until there is some evidence of such failure, or of official misconduct, the undersigned can not, without remonstrating against its injustice, submit to even an implied aspersion of their characters.

"Respectfully submitted by

JOHN JOHNSTON,
ALFRED KELLEY,
SAMUEL FORRER,
LEANDER RANSOM."

"Columbus, March 7, 1835."

On Monday, the 9th of March, the Senate passed the following:

"Resolved by the General Assembly of the State of Ohio, That Gustavus Swan, Noah H. Swayne, and P. B. Wilcox be, and they are hereby, appointed a committee to examine the books and accounts of the canal commissioners and of the canal fund commissioners, and that the said committee report their proceedings and the result of their examination to the next General Assembly."

This resolution, respectful in its terms, and not implying any thing offensive, was sent to the House, and its adoption was the first act of that body, after the reading of the communication of the canal commissioners.

The three persons appointed as a committee, on account of the neglect of the officers of the Legislature, or for some other reason, were not officially notified of

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the passage of the resolution, and nothing was done toward an investigation.

On the sixth of January, 1836, the Board of Canal Commissioners made their last report, and, at its close, this subject is thus referred to:

“The canals authorized to be made by the act of the 4th of February, 1825, “for the internal improvement of the State of Ohio by navigable canals,” having been completed, and the agents of the State, upon whom devolved the immediate disbursements of the moneys expended in these works, having resigned their trusts and rendered their accounts, it is due to the citizens of the State that they be officially informed how their funds have been expended and accounted for, and whether their agents have faithfully and discreetly executed the important duties and powers conferred on them by law.

“It is also due to these agents that their accounts for the disbursement of the large sums which have passed through their hands shall be fully investigated and finally settled; and that the manner in which they have executed their trusts, generally, shall be inquired into, and approved or disapproved, according to its merits, by a committee of the General Assembly, or other persons, in whom both the people and their representatives will have full confidence.

“Books, vouchers, and other papers are liable to destruction or loss, . . . witnesses of important transactions are liable to death, and still more to a failure in their memory of past events; and it is obvious, under these circumstances, that the character of the agents in whom important discretionary powers have been vested, and through whose hands millions of public money have passed, may suffer from the misrepresentations of those who are misinformed or prejudiced, however correct the conduct of the agents may have been.”

In pursuance of this appeal, the General Assembly, in March, appointed a committee of three to examine and report upon the accounts and vouchers of the canal com-

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missioners and canal fund commissioners, and also authorized the Governor to fill vacancies occasioned by declination or otherwise. There were declinations and appointments by the Governor, and the committee was finally composed of three political adversaries of Mr. Kelley, and as violent partisans as could have been selected in the State. That committee, in October, made a report to the Governor, of which the following is a part :

“The Board of Commissioners, appointed ‘to examine the books and vouchers of the canal commissioners, also the books and vouchers of the canal fund commissioners, and to audit and adjust the same,’ in obedience to certain joint resolutions of the General Assembly of Ohio, passed March 14, 1836, hereby and herein report to the Governor of the State the result of such examination as they have been able to make, which is only part of the duty required of them.

“We have also examined the accounts of the acting canal commissioners, with the vouchers connected therewith, and find them substantially correct; in other words, we find no account of money disbursed by them which has not been honestly accounted for, either as agents for contracts, or for contingent and incidental expenses for the construction of the Ohio canals. Respectfully submitted,

ELIJAH HAYWARD,
WM. B. VAN HOOK,
M. Z. KREIDER,
Committee.”

During the construction of the Ohio Canal, every part of the work was subjected to Mr. Kelley's supervision, and contractors soon learned that no fraud or artifice could escape his vigilance, and that they could not avoid the faithful performance of their agreements. He was in-

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flexibly true to the interests of the State. While acting for her, he did not consider that he had a right to depart from the contracts in behalf of a contractor or the State. The State could yield its rights, and be generous with its money, but the agent had no such authority.

The advantage which the State derived from having such an agent was soon discovered. The long line of canal, stretching for three hundred and thirty-three miles from the lake to the river, was constructed with the same care, prudence, and economy that are observed in the best managed private enterprises. The rights of the State were protected; none of her money was squandered, or lost by inattention, carelessness, or negligence; but all which passed through the hands of the commissioners was represented by the best quality of work.

The honest contractors, and most of them were such, were attached to Mr. Kelley. His engineers admired and revered him. One of them informed the writer of this, that the corps to which he belonged looked forward with much interest to his frequent examinations of the work, as he generally spent the night with them, and the evening was passed in the discussion of matters of science connected with their business, or historic or polite literature, from which they derived lasting benefit. He was to them not only an employer, but a friend, who was interested in their success and improvement.

Each year a report was prepared containing a full and detailed statement of what had been done during the preceding twelve months. These reports are models of

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their kind. Their frankness and clearness disarmed opposition, except in one or two instances in which the prejudice of an enemy ran away with his judgment, and whose complaints and fault finding were met and silenced by a little forcible truth.

On one occasion, when a member, who had for many years exhibited unrelenting hostility to Mr. Kelley, was addressing the House in relation to the construction of a portion of the canal near Cleveland, and making statements in regard to it which were untrue, Mr. Kelley happened to be sitting some distance from and in front of him, and being attracted by his bitterness and errors, turned toward him, and looking steadily at him with an expression of the most forcible and direct denial of his assertions, the member begun to qualify, then explain, then retract, and finally sat down.

During the construction of the canals, and after they were finished, agriculture and manufactures rapidly increased, and population multiplied. On this, her first great work, as a necessary foundation, have been built up that wealth and influence which have given to Ohio a place among the foremost of the American States. The improvements which have followed were all dependent upon this.

The State derived all the benefit, but to accomplish it, Mr. Kelley submitted to extraordinary sacrifices. He retired from office possessed only of the property he owned when he accepted it. The commissioners did not consider it their privilege or right to take advantage of

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their positions, as agents for the State, and thus add to their personal fortunes. They refrained even from the appearance of it. Mr. Kelley desired a farm, then covered with forest, and much benefited by the location of the Columbus feeder, but would not enter into any negotiations for it until the canal was completed. The purchase was then made, and the farm is now owned by a member of his family. He retired also with a constitution permanently impaired by exposure, fatigue, and excessive labor, in the discharge of his official duties. He devoted more than ten years to this, all things considered, the greatest enterprise of the State. And so long as the waters of Lake Erie and the Ohio River are connected, and even if the canal be superseded by other improvements, so long as its history is preserved, the name of Alfred Kelley will be held in grateful remembrance.

CHAPTER VIII.

POLITICAL SERVICES.

Removal to Columbus.—Election to the Legislature in 1836.—Services.—Re-election in 1837.—The State Debt.—Chairman of the Finance Committee.—Imprisonment for debt abolished.—Political corruption of the times.—Call for a Whig General Convention.—Picturesque scenes.—Entertaining delegates.

In October, 1830, Mr. Kelley removed with his family to Columbus, where he resided the remainder of his life. In 1836 he was elected to represent Franklin County in the Legislature. He was, as such representative, principally engaged in opposing injudicious legislation, and in endeavoring to protect the State, as far as practicable, against engaging in works of doubtful utility and incurring pecuniary loss.

During the session he offered a resolution directing the Committee on Schools and School Lands to introduce a bill providing for the appointment of a State School Commissioner and prescribing his duties. The resolution was adopted and a bill introduced which became a law, under which the management of our public schools was made a part of the State government, and was systemized and rendered efficient.

It will be remembered that, in the winter of 1819-20, Mr. Kelley introduced a bill to "abolish imprisonment for debt." He was in advance of public sentiment, and

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the measure, though just and humane, failed to become a law. It had had no advocates in the meantime, and slept until this session, a period of seventeen years, when he introduced it again. Its passage was contested, and it finally went over to the next Legislature as a part of the unfinished business.

In 1837 Mr. Kelley and Robert Neil were elected to represent the county of Franklin in the Legislature. The service he rendered to the State, at this session also, consisted mainly in endeavoring to prevent injurious legislation and an increase of the public debt. He made a special effort to prevent abuses which had grown up under a law of the previous year, authorizing a loan of the credit of the State to railroads, canals, and turnpikes. The law contained provisions which, if they had been enforced by the officers intrusted with its administration, would have effectually protected the State against any loss. These provisions were neglected, and companies wrongfully obtained from the State large sums of money. During the pendency of a bill which was calculated to prevent frauds on the part of the officers and companies, Mr. Kelley said:

“He believed, in a pecuniary point of view, the State was trembling on the brink of ruin. If the law was not repealed or modified, bankruptcy would ensue. Under the law, in one year, the State has been made liable for a million and a quarter of dollars, and preparations were in progress for an increase of three, four, or five millions. There were no limits. . . . We were on the brink of a precipice, and unless we acted speedily, we were entirely lost.”

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His warning was not heeded, and the history of the State finances in 1841-2, and a report made in 1845 by a commission appointed for that purpose, establish, by conclusive evidence, the literal truth of his averments.

Near the close of the session, as chairman of the finance committee, he made an important report, in which he grouped together the facts connected with the State debt, its rapid increase, and the deficiency in the revenue, and demonstrated that when the accounts were made clearly intelligible a part of the interest had been paid by borrowing money from other funds. Although these facts were forcibly presented, the Legislature did not appreciate them to such an extent as to adopt any decided measures to reduce expenditures or increase the revenue. He also directed the attention of the Legislature to the imperfect mode of keeping the public accounts, the pernicious consequences of which were fully developed a few years later.

At this session Mr. Kelley's purpose, long entertained and persistently urged while he was a member, of abolishing imprisonment for debt, was accomplished; and from that time forward no honest debtor has been imprisoned for inability to pay his creditors. This humane act encountered opposition and adverse votes at this late period. Reforms are of slow growth, and require much patience and persistence for their accomplishment.

At this time Martin Van Buren was President. Under his administration, and under that of his predecessor,

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though both were professedly reformers, there was a great loss of public money, and the military aphorism—"to the victors belong the spoils"—was announced, by one of their partisans in the Senate, as applicable to the result of an election, and was acted upon by them as a political principle. An election was thus converted into a mere scramble for office and the control of the public funds, and this principle—or want of principle—corrupted every one who adopted it. At this stage of our political history this doctrine was odious to a majority of the people; and, although the two administrations just mentioned had maintained their ascendancy mainly by paying for partisan services with the emoluments of office, still the public had not become so demoralized and corrupted by it as not to appreciate its wickedness, to a degree at least. Many disclosures were made which were startling, and near the close of the year 1839 the public mind became very much excited.

The Whig convention of Ohio had been held generally, if not uniformly, on the 22d of February, and in the city of Columbus. And although, at that season, the weather was usually inclement, and the roads almost impassable, still a convention could be held without much inconvenience, if composed of a limited number of delegates. The Legislature and the Supreme Court were in session at that time, and those attending them generally acted also as such delegates. This year, however, the disclosures at Washington were so alarming that the pressure was very strong for a general convention; and

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the State Central Committee, in pursuance of public sentiment, issued a call written by Mr. Kelley, who was its chairman, and which contains the following moving appeal:

“Whatever may have been the individual opinions of the State Central Committee as to the propriety of calling together numerous delegations from the several counties, at a season of the year usually cold and inclement, they considered it their duty not to dictate, but to obey, the public voice. To the true friends of their country, to the descendants of those patriots of the revolution who, unclad and unshod, braved the winter storms of 1780, marking the line of the march with the blood of their lacerated feet, for whom the canopy of heaven formed a tent, the frozen earth a bed, and the fleecy snow their only covering—to the children of such fathers, we say, ‘Come up once more to the rescue of your country, rally once more under the standard of the veteran who so often in days by-gone led his troops to victory, and with him at your head, march forward to the reform of the reformers—to despoil the spoilers—to rescue the ark of the Constitution, and save your beloved country.’”

This call was effectual, and on the 22d of February, 1840, there was gathered in the capital of Ohio the most enthusiastic and imposing political convention which had been held in the country since the organization of the government. In the winter, and in a rainy season, when the roads were almost impassable, the people of the State in masses thronged toward the capital. From the remote parts of the State the delegates were five or six days on the way. In the North-west, Fort Meigs was rebuilt in miniature and brought down on a wagon. From Cleveland a full-rigged brig, and from the West a small cabin, were conveyed in the same mode. The de-

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vices illustrative of the life of General Harrison were innumerable. The editor of a Washington paper referred to the General as better fitted for a cabin with a barrel of hard cider than for President and the White House, which made the cabin and the cider barrel very prominent at the meeting and during the subsequent canvass.

This convention was composed of all classes. Old and young, professional men, business men, farmers, mechanics, and laborers, all vied with each other in showing respect to General Harrison, who "held the offices but never took the spoils." During the convention enough campaign songs were composed to make a small volume, which was circulated throughout the country.

About sixty of the Cleveland delegates were entertained at Mr. Kelley's house. There was no difficulty in furnishing meals, but to lodge them required some contrivance. One of his daughters suggested, as a solution of the difficulty, that a feather bed should be placed in the middle of a carpeted library and used as a pillow by the occupants, whose feet would point outward from it as a center. A large number were thus accommodated, so that when lying down they resembled a star.

The inhabitants of the city all joined in extending hospitality to the strangers, and the streets were patrolled at night, that no one might fail to be accommodated.

The platform, consisting of a series of resolutions, the most material portion of which Mr. Kelley prepared in

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advance, formed the basis of the proceedings of all the subsequent conventions held in other States. The result of the election, in the fall, was in accordance with this most auspicious opening of the campaign.

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CHAPTER IX.

MR. KELLEY AS A FINANCIER.

Financial distrust in 1840.—Mr. Kelley appointed Canal Fund Commissioner.—The State embarrassed.—Borrowing money in England.—Mr. Kelley's course.—The honor of the State at stake.—Danger of repudiation.—A crisis.—Mr. Kelley's courage and skill.

In the fall of 1840 Thomas Corwin was elected Governor of Ohio. The State and the Nation were then passing through a period of financial embarrassment equal to any in the previous history of either. The moneyed institutions, the currency, and the State and National credit were distrusted; and, although there was much, and perhaps an abundance of money, few were willing or courageous enough to invest in State, National, or individual securities.

This general condition of the finances and business of the country had a specific effect upon Ohio. The extraordinary success of its two original canals naturally created a desire for similar improvements in other parts of the State. And during the inflation which preceded the collapse referred to, such improvements were adopted and the work on them commenced. When the crash came the State was necessarily embarrassed. It was difficult to sell its bonds, and the Commissioners of the Canal Fund, in their struggles to preserve the credit of

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the State, were constrained to borrow from the interest fund of the original canals, and from other public funds, to pay present and pressing liabilities. In the midst of this general distrust and embarrassment, and on the 30th of March, 1841, Mr. Kelley was appointed by the Governor one of the Canal Fund Commissioners, in the place of Gustavus Swan, who then resigned.

As we are now about to enter upon one of the most interesting periods in the history of Ohio, and one of the most important acts of Mr. Kelley's life, it is not best to rely upon general statements alone as to the condition of the State, and the circumstances surrounding him, at the time, when there are public and other documents which afford abundant evidence on the subject. The reports of the Board immediately preceding exhibit clearly the unsettled state of the money markets at home and abroad.

In January, 1840, Joseph S. Lake and Daniel Kilgore, in a report, state that in July of the previous year one of their number by order of the Board went to England, "to negotiate the sale of State stocks;" that "all efforts at home to raise money" had proved ineffectual; and "as the last alternative" the Board considered it "their duty to try a foreign market rather than jeopardize the interests and credit of the State by non-payment to the contractors on the several public works."

The commissioner found American securities "much depressed," and he concealed his mission until October when he was able to arrange a loan of 30,000

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pounds—secured by the pledge of unrestricted stock. With the proceeds of this loan, and by a transfer to the interest fund, “the commissioners were enabled to meet the total interest due to stockholders in New York on the first of January, 1840, thereby fully sustaining the high character and credit of the State.” On the 5th of January, 1841, the commissioners, Joseph S. Lake, G. Swan, and N. H. Swayne, in their report, say :

“Some disappointment has also been experienced, not only in the collection of balances due the State, but in the sale of stocks in Europe and at home. The unsettled condition of affairs in Europe, reacting upon that of Atlantic cities in our own country, has co-operated with the confusion in the currency of our own and the neighboring States to embarrass credit, and to render capitalists, every-where, cautious in seeking permanent investments.

“The commissioners take leave most respectfully to suggest that under the present limitations it is extremely doubtful whether the necessary means for the completion of the public works now in progress can be obtained either at home or abroad. . . .

“It would be unsafe to rely upon sales of six per cent stocks at par to meet the expenses of the public works. There is at present no market, within the knowledge of the commissioners, where an amount could thus be sold approximating that necessary for their completion.”

On March 2, 1841, the commissioners say :

“We are satisfied that stocks to an amount sufficient to meet the public exigencies during the present year cannot be sold without great sacrifices.

“The prospect of further sales of stock, to any considerable amount upon reasonable terms, seems to be at an end. The condition of the money market at home and abroad, the unsettled state of things in Europe, the amount of American securities in the market, the condition of the banking institutions of the country, and the continued action in the public

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mind to a considerable extent in regard to them, all forbid the hope that this prospect will be materially better within the present season, or indeed subsequently, until the existing state of things shall have yielded to those influences which, however favorable other circumstances, time is indispensable to bring about."

It thus appearing to be impossible to procure money by the sale of stocks in Europe or our Eastern market, and the necessities of the State being such as to forbid delay, at the suggestion of Mr. Kelley a circular was addressed on the 3d of April to each of the Ohio banks, inviting propositions for the purchase of permanent stock, and if that should be declined, for temporary loans. No favorable replies were received except from the Franklin Bank of Columbus and the Bank of Chillicothe. In pursuance of these replies a loan of \$500,000 was obtained from the Franklin Bank on the first day of April, and on the 19th of April a loan of \$581,000 from the Chillicothe Bank; each loan was made at six per cent interest, with the interest payable at the State treasury and the principal in New York. With the amounts thus obtained the State was able to meet its accrued liabilities upon the public works and its July interest.

The demands from contractors and other sources were continually arising, and were a continual drain upon the entire canal fund; so that at the end of the fiscal year, November 15, 1841, the "balance in treasurer's hands" was \$1,393.33½. The interest due on the first of January, 1842, was over \$400,000; and near that time tem-

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porary loans matured, amounting to \$300,000. Between the 15th of November and the 1st of January, additional funds were received, but there was a very large deficiency, to be supplied by borrowing or the sale of stocks.

At this crisis, and a considerable time before the 1st of January, Mr. Kelley was in New York for the purpose of paying these liabilities. The credit and honor of the State depended upon his success. In addition to what has been hereinbefore stated, it is necessary, in order to appreciate his surroundings, to recall the fact that "several of the States, including some of the oldest, failed to pay the interest on their public debts, and the General Government itself found it impossible to raise money to meet the pressing demands on its treasury," and the State of Mississippi had repudiated a portion of her debt. These facts affected the market generally.

On the 10th of December Colonel N. H. Swayne, then one of the commissioners, writing from Columbus, says :

"I am greatly alarmed by what you say in regard to the prospect of raising means to pay our interest. Stocks dull at 75! The London agents forbidden to make advances! The banks pressing for the payment of their temporary loans! Money tight beyond example, panic and paralysis universally prevalent, every thing covered with gloom and despondency, and tending downward to the lowest point.

"It is a crisis calculated to quail the stoutest heart."

Above all this there was a special influence brought

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to bear upon this State which tended to impair its credit and defeat every effort of its officers. The Legislature assembled on the first Monday in December, and from the commencement of the session there was an open and avowed purpose, on the part of many members, to destroy all the banking institutions of the State, and to repudiate a portion, at least, of the State debt. One of the leading papers at the capital was in sympathy with this purpose. The disgraceful proposition of repudiation was gaining such favor, and becoming so dangerous, that the Speaker of the House, (the Hon. Rufus P. Spalding), on the 21st of December, came down from his desk and offered the following preamble and resolutions:

"Whereas, an opinion has become prevalent that the independent States of the Union will, at some future period, repudiate the payment of the debts by them respectively contracted with capitalists, both in Europe and America; and whereas, such an opinion is at variance with every principle of patriotism, morality, and even of common honesty: Therefore,

"Be it resolved by the General Assembly of the State of Ohio, That a just sense of right, independent of the high claims of her citizens to a character distinguished for honor and integrity, should effectually preclude our great State from entertaining the crude notion of absolving herself from the claims of her creditors by the mere exertion of sovereign power.

Resolved, as the sense of this General Assembly, that the citizens of Ohio respect the sanctity of their engagements, whether of a public or private nature, and will at all times be found willing to pay the principal and interest of all debts by their State Government fairly and lawfully contracted."

The preamble and resolutions were adopted by the House on the day they were introduced, only six mem-

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bers voting in the negative. They were afterward materially amended in the Senate and in the House, and in the latter body were laid upon the table by a vote of 48 to 34, and were not afterward acted upon. On the same day (December 21st) the following preamble and resolutions were offered :

“Whereas, an opinion extensively prevails that, in contracting a portion of the public debt of this State, the faith of this State has been arrogantly and unlawfully pledged to certain corporations within her borders, for a continuance for years of the powers whose existence and abuse have inflicted incalculable evils upon the community : Therefore, be it

“Resolved, that the faith of this State, so pledged, be and the same is hereby repudiated.”

The vote on this proposition was 29 yeas and 41 nays.

On the 21st of December, an article appeared in the *New York Journal of Commerce*, a part of which is as follows :

“ ‘Correspondence of the *Journal of Commerce*,’ being a letter from Columbus, Ohio, and dated December 14, 1841, in which it is stated that :

“ ‘The Senate of Ohio has directed, by a strict party vote—19 to 17—the appointment of a standing committee on the public debt, whose province it is to inquire into the origin, rise, and progress of the present enormous debt of about \$17,000,000, under which the State now groans.’ That one Senator, Mr. Leonard, in the animated debate which arose on the question of appointing this committee, stated ‘that rumors had been prevalent that the books of the State Fund Commissioners would not balance by \$500,000, and that it was due to the credit of the State and to the character of the Fund Commissioners that such rumors should be put at rest forever, or the truth demonstrated by authority. These rumors, I have been told, were in circulation last year, and apply to the late Fund Commissioners. Of their truth or falsity I have no means of forming a correct judgment.’ ”

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Mr. Taylor, another Senator, in the same letter is reported as stating as a reason for the appointment of the committee, "that the question of REPEALING THE DEBTS OF THE STATES had already been seriously mooted in more than one member of the confederacy, and that the frauds complained of elsewhere were not rare, even in the history of the finances of Ohio." The writer says he was told, by those who were well informed on the subject, that the Senator had reference to "certain acts of the Fund Commissioners (of whom Alfred Kelley is the 'head and front') by which they borrowed large sums of the Franklin Bank of Columbus and the Bank of Chillicothe," etc. The writer then adds, "that the committee, in the course of its investigations, may discover transactions far more iniquitous, and far more in contravention of law, than these to which I have alluded above."

The *Ohio Statesman*, of December 28, 1841, said on the same subject:

"Such is the bankrupt, starving condition of the State and her laborers, brought about by one year of Whig misrule and bank swindling."

Mr. Kelley's appreciation of the crisis and of his responsibility, together with his purpose with reference to them, may be more fully appreciated by some extracts from his letters to his wife. On the 25th of December he wrote as follows:

"It is now evening, and I have spent any thing but a merry day. Never before in my life have I been placed in a

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situation so peculiarly difficult and embarrassing. We have upward of three hundred thousand dollars to provide, against the third day of January, and as yet I do not know positively where more than eighty or ninety thousand of it is to be obtained. We are trying to make arrangements and have hopes of effecting them. But we have not yet the certainty. While every thing here has been of the most disheartening character—money scarce, want of confidence in all kinds of securities, stocks falling, money dealers panic-stricken, some *wretch*, in whom is concentrated the essence of malignity, has written a letter over a feigned name, or the name of some unknown individual, intimating that the Commissioners of the Canal Fund had exceeded their powers, that their accounts would not balance by five hundred thousand dollars, and that there was reason to apprehend that they had been guilty of still grosser frauds, and that the State might refuse to pay debts of their contracting, and this infernal letter is published in one of the principal daily papers of this city.

“Thus while I am here making almost super-human efforts—using my personal influence, pledging my individual responsibility to raise money to pay the interest on the State debt, to preserve her faith and her credit untarnished—some debased wretch, some degraded son of Ohio for the sake of thwarting and embarrassing me to gratify his personal or political enmity, is willing to make a stab at the honor of the State and cause her a serious pecuniary loss. True, this infamous libel was soon contradicted in the same print, but slander flies on eagle wings, while truth creeps slowly after on the back of a snail.

“We hope to know on Monday or Tuesday what we can do—what we *must* do. That we shall be compelled to raise money at a great sacrifice I have no doubt, and I hope that one good at least will grow out of the evil—that the Legislature and the people will at least be convinced of what I told them long ago, that they must curtail their expenditures or

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be bankrupt. They are now at the end of their tether and can go no further."

On the first of January, 1842, and after he had learned who wrote the letter to the *Journal of Commerce*, he said :

"Though far from being happy myself, because far from those I love best, still I am much more happy than I was on Christmas day. Then I could not see where the money was to come from to pay the interest on the State debt ; now I can see where nearly all of it is to come from, and have no doubt, among several expedients to raise the balance, some of them will prove efficient.

"Never before was I placed in such a trying and responsible situation—surrounded with difficulties nearly insurmountable in themselves, and greatly increased by the fiend-like machinations of enemies who for the sake of thwarting me would willingly see the State disgraced. I felt it almost impossible to accomplish the object committed to our care, and at the same time to move heaven and earth rather than suffer myself to be foiled, my enemies to exult in my defeat, and, what is more, the great State of Ohio to be forever disgraced.

"A vile incendiary may set fire to the most splendid edifice—it requires no talents to work destruction, and the poor wretches whose malice has thrown such obstacles in our way may exult as a *moth* that has eaten holes in a costly garment. A foreigner who has been received into the bosom of a hospitable state, may have the demoniac satisfaction of knowing that he has, like the viper in the fable, stung the bosom that warmed him into life ; but, thank Heaven, he can not have the satisfaction of defeating me in the main object, that of saving uninjured the honor of my beloved, though ungrateful, State. But for my unwearied exertions, prompt and ener-

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getic action, and the confidence which I believe is felt in my individual energy and responsibility, and a sincere desire on the part of some of the most influential moneyed men here to aid me, I do not believe we could have succeeded."

Such were some, but by no means all, of the obstacles which it was necessary to overcome in obtaining money for the State, and to save its honor. Though comparatively meager, they will materially aid in appreciating the following extracts from what was commenced as an obituary notice of Mr. Kelley, by his intimate and valued friend, the Hon. Gustavus Swan, but which grew on his hands beyond the limits he originally prescribed, and contains much that is interesting in relation to this critical period in the history of the State. The Judge had been a Fund Commissioner immediately before, was reappointed in 1842, and was therefore familiar with the embarrassments and peculiar circumstances attending the payment of the accruing temporary loans, and that installment of interest on the public debt. He had reason to know and to watch the proceedings of the Legislature, its effect upon the markets, and the influence upon public opinion. He devoted much of his time during the session to endeavoring to prevent pernicious legislation, and to procuring such as would benefit the State. What occurred was fresh in his mind, and he referred, with feeling, to the attacks upon the credit of the State, and the risks incurred by his friend.

CHAPTER X.

REPUDIATION REPUDIATED.

Judge Swan's testimony to Mr. Kelley's services at this crisis.—A stormy outlook.—Mr. Kelley's personal liabilities.—His letter to the *Ohio State Journal*.—Repudiation repudiated.—Mr. Kelley's triumph.—His financial mission to Europe.

“Great as the debt undoubtedly is which the citizens of the State owe to Mr. Kelley for his long and faithful legislative labors, it is small, even insignificant, in comparison to that due him for other services, services of which no evidence is preserved in the public archives, and which are only known, in their full extent, to a very limited number of his survivors. It is a fact, however, still susceptible of proof by living witnesses, that his exertions and personal sacrifices, with but little aid from others, *saved the State from repudiation*.

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“This is not the proper occasion for fully investigating the causes which, at more regular periods than meet the common observation, produce revulsions in commerce and business, and which involve the speculator, the extravagant, the purblind, and all who make too much haste to become rich, in disappointment, distress, and bankruptcy. Certain it is, the most alarming revulsion this country ever witnessed, since its revolutionary struggle, transpired between the years 1836 and 1842, and perhaps another year might be added to the culmination.

“The exact period of these monetary revulsions, like those of comets from disturbing influences, is difficult of rigorous calculation. They are generally, however, preceded by a sudden rise and followed by a sudden fall in prices, and the fever produced by the one and the torpor left by the other are equally fatal to the permanent prosperity of the country.

“To get in and out of pecuniary embarrassment, and to indulge at one time in reckless extravagances, and at another to practice the most rigid economy, seem to be the fate of

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our countrymen. At the period under consideration, the people had mistaken the appearance of prosperity, arising in part if not exclusively from a redundant circulating medium, then, as often, without sufficient basis for permanent security for the reality, and had engaged in extreme enterprises, promising little public benefit and scarcely any return upon the outlay. They were heedless of the ordinary signs which, to the careful and experienced observer, indicate the approach of these revolutions with as much certainty as insolvency follows expenditure beyond income, or darkness the setting sun.

“The country was in this condition when Mr. Kelley received the appointment of Canal Fund Commissioner. He was not ignorant of the difficulties and responsibility, but did not probably anticipate the extent of the former which he had the misfortune to encounter; and, if he had, it was not in his nature to decline facing them. Difficulties which would deter most men from accepting office or trust, if the public good required them to be met and overcome, never produced in him a moment's hesitation. His private interests, his ease, were always sacrificed for the public good. Such was the principle of his life.

“The public did not rest satisfied with the two canals which had at first been undertaken and completed, but under the plausible pretext that equality of benefits demanded further extension of State improvements, other canals and public works, requiring immense outlays for their construction, had been undertaken and were in progress and unfinished, without having accurately estimated their cost or providing means for their completion.

“No sufficient means had been provided to meet these great expenditures, and the further extension of credit appeared to be the chief, indeed the only reliance. The probability that circumstances might arise which would render this difficult, if not impossible, seemed never to have been anticipated by the wild projectors of these various schemes.

“Mr. Kelley had little or nothing to do with any of them until the difficulties became unmanageable by those who controlled the finances, which were in as bad a state as well could be imagined, and required no ordinary talent to bring them

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out of the derangement and confusion in which they had become involved.

"The banks, from necessity, had suspended specie payment, and the currency, chiefly paper, had suffered great depreciation, or become worthless; confidence and credit were lost, and the State, deeply involved in debt, and depending principally upon borrowing, was on the verge of bankruptcy. Such was the panic and confusion, and such the loss of confidence and credit, that many of our most intelligent and patriotic citizens became disheartened and discouraged, and deemed it impossible to save the State from the stain and disgrace of repudiation, and warmly advocated the suspension or abandonment of the unfinished public works which, they insisted, had been imprudently and prematurely begun, and could not be finished without involving the State in hopeless ruin.

"The finances, now in a deranged and confused state, were, by his coadjutors, mainly left to his management and control, and fortunately for the State, its citizens and creditors, they could not have been committed to abler or more faithful hands.

"In his first official year, almost exclusively by his exertions, temporary loans were made to carry on the unfinished public works which had been improvidently undertaken, and to meet other urgent and pressing demands, and the character of the State for good faith preserved.

"When the Legislature convened, in the latter part of the year 1841, there were two members of the House of Representatives who rendered themselves notorious for their hostility to all corporations, and to all the creditors of the State, urging most vehemently that the proper and just remedy for the evil was the abrogation at once of all the debts of the State. In short, they were radical repudiators in the worst possible sense of the term.

"How these abandoned persons contrived to obtain office, and to gain an influence with better men, is a problem not of easy solution. All that can be said is that the elective franchise, like other good things, is occasionally subject to abuse, and the masses, like individuals, are not always infallible in their judgment.

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“They appeared to use their greatest efforts to disgrace the State, and ruin its innocent creditors. Their fury was particularly directed against corporations, and especially moneyed corporations. They gave tongue, and found not a few, in and out of the Legislature, following in the rear, and not less eager to be in at the death. They charged the creditors of the State, one and all, as being a pack of villians, and their own officers connected with the revenue as no better. As Mr. Kelley stood out prominent amongst the agents of the State, he was peculiarly the object of their hatred and malignity. His effort to save its honor and protect its creditors was denounced as complicity to defraud it.

“Some of the partisan prints published their calumnious and incendiary harangues, and with commendation, adding remarks of their own of a like character, or, if possible, worse.

“The creditors of the State became alarmed at what was mistakenly supposed to be the general sentiment and policy of the State. It is, however, but justice to say that the majority of the people had full confidence in the integrity of the officers intrusted with their finances, and were ready to make any sacrifices to preserve the credit and honor of the State. This, however, was less manifest then than afterward.

“A very great number of private individuals had invested their all in our public securities, and several of the banks had loaned the State more than half their capital stock. The contagion of their pernicious example spread amongst some of the weaker members of the General Assembly, who were consequently more susceptible of the moral virus, until a large minority, if not a majority of the members, became alarmingly infected with repudiation.

“Under the most inauspicious circumstances which could be well imagined, the most fearful crisis the State ever encountered was approaching and had to be met. No measure was adopted or even proposed by the General Assembly to provide means to discharge the claims owing by the State and already overdue, or to meet the interest on the public debt. For these purposes the officers had to rely upon their own exertions or the State must fail. Their situation was ex-

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tremely embarrassing, and they did not know well what course to pursue in the present emergency. The treasury was empty, the stocks of the State at a ruinous discount, indeed could not be sold at any price, or received in pledge for advances; public credit was gone, and the only alternative presented was either to obtain a loan on personal security or submit to repudiation, and the choice did not admit of delay. All hope of assistance from the Legislature had entirely ceased.

“ His [Mr. Kelley's] resolution was fixed, and no danger, no opposing difficulties, could divert him from his purpose. He was determined to lose all or save the State from dishonor and its creditors from ruin. Such was the confidence reposed in his integrity and financial ability, notwithstanding the underhand and atrocious means employed to defeat his object, that he was enabled to raise, in that city, when no one at the time could have been found there who would have intrusted the sovereign State of Ohio with a dollar, nearly a quarter of a million on his own personal security; and thus, by his generous efforts, and by his alone, the State was saved from disgrace, and thousands of its creditors, including many widows and orphans, from poverty, distress, and ruin.

“ No citizen of this State, few of any State or country, ever performed a more praiseworthy, a nobler action. His labors, his anxiety and sufferings, before he succeeded in the magnanimous undertaking, and one which should be preserved in the memory of coming generations through all time, can only be known, in their full extent and measure, to a few of his survivors and probably to none capable of doing them full justice. Nor should it be forgotten that these great and valuable services were performed without the smallest compensation, and all the hazard incurred without the slightest indemnity.”

Mr. Kelley was necessarily detained in New York until some time in February. While there he received information from Columbus which would have disheartened a man who was not possessed of extraordinary courage and an indomitable will.

On the 13th of January Judge Swan wrote :

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“The course of our Legislature and the public prints, with the fearful condition of affairs every-where, is producing a universal panic in the mind of the community, the end of which can not be foreseen.”

He refers to a mob attacking banks in Cincinnati, and a determination to force other banks into insolvency; and then, after referring to the “absolute ferocity of parties,” advises Mr. Kelley to resort to all legal means within his power to exonerate himself “from personal responsibility for the State.”

On the 6th of January, *The Statesman* in an editorial says:

“This tinkering with the banks has brought our State, as it has others, to a state of bankruptcy and discredit that is gloomy enough.”

In his memorial Judge Swan refers to the proceedings in Columbus after the payment of the interest in New York as follows:

“On his return he discovered that many members of the General Assembly showed evident signs of regret and disappointment, and appeared still determined to suffer things to go to ruin without an effort to prevent the calamity. They knew well that some of the public debts had been contracted to pay others, and hence they appeared to cherish the hope to carry into effect their original design, which was to rob the whole creditors of the State.

“Mr. Kelley found, on his return, an unabated hostility by many to all who took an interest in the preservation of the public faith and honor.”

Although the payment of the interest on the State debt in January, 1842, together with the temporary liabilities then maturing, was perhaps the most important event

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in the financial history of Ohio, it was still necessary, as suggested by Judge Swan, to procure from a reluctant Legislature an act of more personal consequence to Mr. Kelley than any thing which had preceded it, and of quite equal importance to the State. The temporary loans must be provided for, and their payment by the State could be secured only by the enactment of a law for that purpose. Its terms must also be broad enough to include the loans made upon his [Mr. Kelley's] personal credit.

Very soon after he reached Columbus, he met a personal friend (Mr. John W. Andrews, still living in the city), and informed him that he had procured money for the State on his individual credit. His friend replied, with earnestness, "that he ought not to disclose that fact, as the effect would be mischievous." A knowledge of his personal liabilities was confined to a very few confidential friends.

On the 19th of February, 1842, a bill was introduced into the Senate authorizing the commissioners to borrow money in order "to pay the temporary loans contracted by said commissioners on behalf of the State under the authority conferred on them by the acts of March 29, 1841." This restricted the payment to a particular class of loans, and it might be doubtful whether it would have embraced the loans of the banks in this State.

The opposition to the bill in that or any other form was persistent; and, although before the Senate many times, it did not pass that body until March 2d.

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Mr. Kelley's opinions and acts and motives were freely canvassed and grossly misrepresented; and on that second day of March, in order to inform the public and the Legislature of his relation to the causes of the financial embarrassment of the State, the remedy, and on whom the responsibility of applying it then rested, he published the following in the *Ohio State Journal*:

"TO THE PUBLIC.

"It frequently happens that a man is made accountable, not only for the sins he actually commits, but for those he has endeavored to prevent; not only the consequences of his own errors are charged to his account, but the consequences of the acts of others against which he remonstrated. Such is my fate in regard to the present financial embarrassments of the State.

"These embarrassments are chiefly, if not entirely, owing to augmenting the debts of the State more rapidly than the resources for paying the interest on these debts could well be increased; to a want of economy in prosecuting some, at least, of the public works; to advancing large sums of money to private companies, when the State could not obtain money to pay the contractors on her own works; and loaning her credit to other companies when she had no credit to spare.

"Against this unwise and hazardous course of policy, when last in the Legislature, I solemnly protested. I warned the House of which I was a member of its inevitable consequences, and sought to check the headlong precipitancy with which the State was increasing her liabilities, and sacrificing her resources to aid private companies in the accomplishment of local purposes. But individual and local interests combined, rendered efficient by a system of log-rolling too common in legislative bodies, triumphed over the dictates of prudence, and the State continued to contract debts and lend her credit, until at last stern necessity forces her to adopt a course which prudence long ago dictated.

"But the condition of the State, though embarrassing, is by no means desperate. If the Legislature will now promptly

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declare that the State liabilities shall not be increased; that only so much stock shall be sold as may be found necessary to pay off the temporary loans contracted under the law of the last session and the balances now due to contractors, so much of it redeemable and the interest payable in New York as is necessary to discharge the temporary loans contracted in that city, and so much as is necessary to pay the debts due contractors and the banks of this State, redeemable and the interest payable at the State treasury; will suspend the further prosecution of the work on all the canals of the State, except the Wabash and Erie Canal, and sell the lands belonging to that canal to finish the work yet remaining to be done; will advance no more money and lend no more stock to turnpike, canal, and railroad companies; will appropriate all surplus moneys in the treasury to the payment of the interest on the State debt, in order to make up for the anticipated deficiency of tolls arising from the probable scarcity of money during the ensuing season—the credit of the State will be sustained, the interest on the State debt punctually paid, and further embarrassments prevented.

“If, on the other hand, local and personal considerations are yet to prevail over the great and permanent interests of the whole State; if serious injury is to be inflicted on the credit of the State for the mere purpose of destroying the characters of one or two individuals who may chance to be obnoxious to personal or party animosity; if those who are intrusted with the guardianship of the public good shape their course with reference to making political capital rather than to saving the State from lasting disgrace and ruin—then, indeed, is our case a hopeless one.

“In making these remarks I have been governed by no wish to cast censure on the acts or motives of others, in whatever situations they may have been placed. Nor would personal considerations alone have induced me to depart, in this instance, from my usual course, which is not to notice the frequent personal attacks and misrepresentations with which I am assailed through the columns of the public prints. But, as my conduct as a Commissioner of the Canal Fund is intimately connected with the financial condition of the State, I have thought it a duty, owing as well to the public and the distinguished individual by whom I was appointed, as to myself, to correct in general terms the misrepresentations which have been so industriously propagated in reference to the agency

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I have had in producing the embarrassments under which the State now labors; and to expose once more, publicly, my opinion as to the course of policy now to be adopted.

“ALFRED KELLEY.”

The bill after being amended by substituting a new one, which did not contain any provisions whatever for the payment of any temporary loans in New York, passed the House on the 5th of March. The Legislature had resolved to adjourn on Monday the 7th, and, as was the custom at that time on the day of adjournment, it met the previous midnight and finished its business before breakfast.

On the 5th the Senate refused to agree to the amendments of the House; and the House insisted, and asked for a committee of reference. Such was the situation when the Legislature adjourned on Saturday night. Neither the original bill with or without its amendments, nor the substitute of the House, would have enabled the commissioners to pay the temporary loans of the State or the personal loans made for her benefit.

Those friends of the State who appreciated its condition were now extremely anxious in regard to the result. Should either of the pending bills pass, it would result in repudiation, as no provision was made to pay the temporary loans then maturing; and the Legislature would only be in session on Monday morning from 12 to about 6 o'clock. During those few hours, and in the rush and confusion which always characterize the close

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of a session, a radical change must be made in the pending bills on this subject.

Though the circumstances seemed unfavorable, those who desired the payment of all the liabilities of the State did not relax their exertions, but availed themselves of every moment in endeavors to satisfy the reluctant members that the honor of the commonwealth was at stake, and that its liabilities should be provided for. And although Mr. Kelley was so deeply interested in the result, it was said that he was the coolest and most collected of them all. Notwithstanding the injudicious and unjust proceedings of the Legislature he did not believe it would openly and deliberately repudiate its liabilities, or rush into bankruptcy.

The bills then pending were so grossly inadequate and defective that Mr. Kelley had previously prepared a bill in accordance with the article "To the Public" and fully carrying out its suggestions. This bill was submitted to the committee of conference; and, although it differed radically from the bills under its consideration, the committee was so influenced by the representations of its friends, the position in which the publication of March 2d placed its opponents, the necessity for doing something, and the impossibility of agreeing upon any thing then before the committee or preparing any thing new, from want of time, that they decided to report the bill so submitted to each House; in which its passage was one of the last acts before the adjournment Monday morning. Notwithstanding the evident pro-

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priety and even necessity for its passage, ten voted against it in the Senate, and sixteen in the House. It contained a provision for the sale of so much of the "stock of the State" in New York City, without any limit as to price, as would produce a net sum "not exceeding five hundred thousand dollars," for the purpose of paying the temporary loans contracted on behalf of this State by said commissioners, in the City of New York, and in this State, and now remaining unpaid. It provided also for the suspension of all the public works of the State except the Wabash and Erie Canal until the close of the next General Assembly; for borrowing money to pay "balances now due to contractors upon the public works, and for the completion of the Wabash and Erie Canal."

Few then appreciated the imminent danger of the State on the 3d of January and the 7th of March, 1842. Forty-five years have passed, during which many important events have occurred and changes taken place; and it is only the quite aged who have any knowledge of the general financial condition or the peculiar situation of the State at the periods referred to. On the 3d of January, its honor and credit were saved, and could have been saved, only by pledging individual responsibility for money to pay its interest; and on the 7th of March by procuring through outside effort and influence the passage of a bill, by a reluctant Legislature and in the last hour of its session, without which its liabilities would have been protested, and its credit forever dishonored.

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The law of March 7th declared an intention on the part of the State to pay its liabilities of every description, and, as far as practicable, to diminish its expenditures. This declaration materially improved her standing in the eastern market. That market was unsettled, and there was a strong indisposition to purchase any securities ; but much was gained by the removal, to some extent, of the bad reputation the State had acquired in consequence of the previous proceedings of the Legislature and the declarations of members and editors.

What was accomplished by the board, consisting of N. A. Swayne, Alfred Kelley, and G. Swan, during the first four months, together with their views, may be gathered from a few extracts taken from a special report made by them on the 28th of July, 1842, and which was probably written by Mr. Kelley. They say :

“ It will be remembered that, at the close of the last session of the General Assembly (March 7, 1842), a full report was made, embracing all the transactions of the board up to that period.

“ Since that time, all the temporary liabilities of the State (except those to the banks of Ohio, from which temporary loans had been previously made) have been extinguished. No new loans of that character have been contracted.

“ The amount taken from the interest fund and applied to the public works during the past year, as heretofore reported, has been restored. The installment of interest recently due on the State debt was punctually paid, without embarrassment or difficulty.

“ The undersigned have deemed it of the highest importance to maintain the character of the State, hitherto unsullied, for integrity in her dealings with those who, confiding in her good faith and punctuality in meeting her engagements, have, without any other security, intrusted her with their money.

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A failure to pay the interest on the State debt would produce mischief and suffering, far-reaching in their ramifications beyond what can be readily conceived, in these times of widespread bankruptcy and universal apprehension; it would at once make shipwreck of the value of the stock to the holder. Such securities are always absorbed as permanent investments. Another immediate effect would consequently be in many instances to deprive the aged and infirm, the widow and the orphan, of the means of bread and raiment. No consideration of a selfish nature, in public or private affairs, should ever have the slightest weight when poised against those of justice and good faith; and in an enlarged view of any subject requiring human action, whatever is morally right is always identical with what is expedient. In the most selfish view, however, that can be taken of this subject, a failure to meet the foreign engagements of the State would be the worst possible policy for all concerned. She would at once be shorn of her credit, and consequently deprived of the means of commanding money by loan for any purpose. All those to whom she is indebted, at home as well as abroad, would consequently suffer. The value of the securities in their hands would be greatly impaired, if not destroyed, while the prospect of future payment would be rendered dark and distant, and depend entirely upon the restoration of her credit. All would be injured and none would be benefited. Public credit is like individual character—it is much easier to *preserve* than to *restore* it.

“The sacrifices which the State has made in order to meet her engagements have not been such as in any material degree to increase her burdens, and are not greater than those made by other States in undoubted credit. The results secured in the fulfillment of her engagements and the maintenance of her credit are worth greatly more than they have cost.”

The act of March 7, 1842, conferred upon the commissioners extraordinary powers, which were coupled with great responsibility. The emergency was such as to require such a law. The execution of the law, and to carry the State through that critical period, required more than ordinary discretion and judgment. What was

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done under it is embodied in the report of December 27th, made by G. Swan and N. H. Swayne, Mr. Kelley not uniting in it on account of his absence.

In order to procure some of the money required, the commissioners, on account of the depressed condition of the American market, in the language of the report, "deemed it their duty, before making sales to any considerable extent at home, to try the effect of an effort in the European market." Mr. Kelley accordingly went to Europe in May, where, according to the report, "he found the apprehension of the security of all the American stocks so strong, and so little discrimination made between the stocks of the punctual and solvent States and those of the States which had adopted the doctrine of repudiation or sunk into insolvency, that the prospect there was no better than at home. He made a sale, however, upon terms which yielded about sixty-eight per cent upon the par value of the stock. The particulars of the sale will be found in the account before referred to. Further sales have been made from time to time, in the eastern market, the particulars of all of which will also be found in the same account."

The following extracts demonstrate the wisdom of the law :

"All the temporary liabilities abroad, mentioned in the last annual report of the commissioners, have been paid. No other loans of that kind, of any considerable magnitude, have since been made."

In reference to the law, and their action under it, the commissioners say :

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“They believe the inquiry may be safely challenged, both as to the action of the Legislature and of the commissioners in giving it effect. *What better could have been done?*”

The following statements are made in regard to interest and liabilities:

“The interest upon the domestic debt was punctually paid when it became due. The interest upon the foreign debt also was punctually paid upon the first days of January and July last. The interest upon that debt, which will become due on the first of January, proximo, will also be punctually met.”

“Less than two and a half millions of dollars would be sufficient to pay all the liabilities of the State, other than the funded debt, and also to complete the Miami Extension Canal.”

The commissioners then make a statement which is taken from a table prepared by Mr. Kelley the year previous, and attached to the annual report of January 20, 1842, of the area, fertility, productions, exports, population and its increase, the debt, revenue, and the true value of lands and personal property of the State, and add:

“The entire funded debt, foreign and domestic, is \$14,967,519. The interest upon this sum is \$897,951.14. The whole debt is less than the exports from the State during a single year. If the State were wholly without the income derived from her investments, a tax of a mill and three-fourths upon the dollar, of the actual value of her real and personal property liable to taxation, *would more than pay her entire interest*; and a tax of two and three-fourths per cent on the dollar *would more than pay the entire debt.*”

In March, 1843, Mr. Kelley and his associates retired from office; the Board having been reorganized by a law passed in that month.

They delivered to their successors the assets of the

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office in good condition, with the interest provided for, all stains upon the credit of the State removed, and every thing so arranged that no difficulty would afterward be encountered, if judicious legislation should be secured, and reasonably good judgment exercised in carrying out its provisions.

CHAPTER XI.

A NEW BANKING SYSTEM.

Retirement from office.—Elected to the Senate.—The currency and its reform.—The United States Bank.—The panic of 1837.—A State bank for Ohio.—Mr. Kelley's views.—Foundation of the present banking system.

Mr. Kelley retired from office and the service of the State in 1843. He was not however allowed to enjoy the rest he longed for and needed, but in the fall of 1844 was elected to the Senate. The cause which produced this result was a desire among the leading men of the State that he should aid in improving the currency, and perfecting some plan by which the finances of the State would be rendered secure against general business derangement, and also against the assaults, open or covert, of those who might attempt to break down public credit.

The condition of the currency in 1844 may be gathered from what has been hereinbefore stated; and originated in an unfortunate policy of the General Government adopted many years before. From an early period down to 1833 or 1834, the currency and commercial transactions of the country were influenced, and in a great measure regulated, by a United States Bank. Its circulating notes were every-where readily received, and producers could always procure needed temporary loans. Its bills of exchange, between the most distant points,

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also furnished the producer the means which were indispensable, in a country so extensive and possessing so productive a soil and such a variety in climate as the United States, in transporting his products to a market. The country, during that period, was generally prosperous. Unfortunately, the administration became hostile to the bank, and commenced a war of extermination against it. A re-charter was refused and its business closed. And in defiance of the timely warning that a "degraded paper currency," especially when "authorized by law," is oppressive and demoralizing, under a strong influence from Washington, a swarm of chartered and private banks sprang up in every State to supply its place. An unnatural stimulus was thus given to every branch of business; imports were increased and exceeded exports; speculations entered into every department of business; real estate rose rapidly in its nominal value; large portions of the public domain were appropriated by individuals and companies; property of every description was bought and sold with marvelous rapidity; and fortunes were apparently made in a day. In 1836, Mr. Calhoun stated in the Senate that "he believed the state of the currency incurably bad, so that it was very doubtful whether the highest skill and wisdom could restore it to soundness." In the midst of this mania for paper money, the virus of which proceeded from Washington, the President issued a "circular," requiring all agents for the sale of the public lands to receive nothing but specie in payment. Coin was also exported to pay

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for the excess of imports over exports. This increase of paper and drain upon the metallic currency rendered it impossible for the banks to redeem their issues; and in 1837 a suspension became general throughout the country. Ohio, being midway between the East and West, was a great sufferer by the influx of paper from other States. Portions of the State were not seriously affected by the mania for extravagance and overtrading, but the circulation of worthless paper deranged her business generally and was destructive of confidence. Her few solvent banks were crippled by the multitude of those which were of more than doubtful credit. Previous to the resumption of 1842 or 1843, many unsuccessful attempts were made to establish systems of banking; and although after the resumption the business of the country was conducted upon a sounder basis, there still remained a general distrust. Comparatively few banks were above suspicion, and the reputation of such was very limited. The desire, if not the necessity, of a banking system which would command the public confidence in and outside of the State was very evident, and it was demanded by all sound and judicious dealers. Such was the condition of the State and the currency when Mr. Kelley took his seat in the Senate in December, 1844.

During the interval between the election and the meeting of the Legislature, he devoted much time to the subjects of banking and currency, and on the 7th of January, as chairman of the committee on currency, he matured and introduced a bill "To incorporate the State

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Bank of Ohio and other banking companies." The bill was accompanied by a report, which clearly sets forth the purposes and objects of its various provisions. The material parts of the report are as follows:

"The committee entertain no doubt that a very large majority of the people of the State anxiously desire the enactment by the present General Assembly, of some law authorizing the establishment of banks which will furnish them with a safe and convenient currency, afford reasonable facilities for obtaining money to meet the wants of commercial and manufacturing operations, and at the same time hold out proper inducements to those who have money to invest in banking institutions.

"In framing this bill, the committee have constantly in view the great land-marks of entire security to the bill holder, reasonable security to dealers with the banks, and proper inducement to the capitalist, whether great or small, to invest his disposable means in banking.

"Two modes of banking have, within a few years, been presented to the people of Ohio, and each appears to have its devoted friends. The one a system of associated banks, each to some extent exercising a restraining power over the others, or rather, the whole association exercising the power so far as is necessary to prevent hazard to the public or to the association, over each of the banks so associated, and being bound for the default of any one so far as to prevent any loss to the bill holder. The other a plan of banking similar to that provided for in the New York general banking law, allowing any association which may be formed for that purpose to obtain notes for circulation by depositing with the Treasurer of State the certificates of the funded debt of the State as collateral security for the redemption of those notes. The conflicting opinions in regard to the relative merits of the two systems seem to have arisen and acquired strength in different sections of the State, as much from the difference in the financial condition of the inhabitants of those sections as from the opposite views which different men will take of the same subject when presented to the minds of each.

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“In one section, where there is little or no surplus capital in the hands of the resident citizens, but where the amount of commercial business is great, and the field for the profitable use of money extensive, a system of banking which it is believed will induce foreign capitalists to invest their means in bank is deemed to be of paramount importance. While in another section, where the amount of local capital is sufficient to furnish the community with the necessary banking facilities, such a system is desired as will permit resident capitalists to engage in banking without compelling them to make large investments in public securities to be pledged for the redemption of the circulation of the bank.

“To reconcile these conflicting opinions, and to extend to the different sections of the State that relief which the people so generally demand at the hands of the General Assembly, the committee have so framed the bill as to give to the capitalists, whether citizens or non-residents of the State, their choice as to the mode of investing their means in banking.

“In authorizing the business of banking upon the plan of securing the notes of circulation by the hypothecation of certificates of stock, the committee have departed in several particulars from the provisions of the general banking law of New York. This they have done after mature reflection, and from a settled conviction that it would be unsafe to adopt that law in this State, without further restrictions.

“Most of the capitalists who have availed themselves of the provisions of that law in New York are citizens of that State, amenable alike to public opinion where they reside and to the penal laws of the State. Most of those who would be expected to avail themselves of such a law in this state are not resident citizens of the State, and would therefore be amenable to a very limited extent either to our laws or to public opinion. Nor can the characters of men for honor, integrity, or responsibility, be as well known in a distant State as in the State where they reside. To secure within our own borders a portion at least of the capital which is indispensable to correct and honest banking, and a part of the stockholders in accordance with whose will the banks are to be conducted, so as to have something tangible upon which our laws can operate, and directors who shall be known to our citizens, and who shall be amenable to our penal laws, if fraud upon the public shall be attempted, the committee have deemed it indispensable to require to be paid in an amount of capital

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stock which shall bear a certain proportion to the amount of circulation to which the banks shall be limited; to provide against the withdrawal of such capital, that the directors shall be citizens of the State, whose moral characters and responsibility can be known, and who shall themselves have so much at stake as will make it their interest faithfully to administer the affairs of the bank.

“The laws of New York to which we have alluded present the curious anomaly of prohibiting, under heavy penalties, the withdrawal of any portion of the capital of a banking company while it shall continue its business as a bank; while the same laws require no capital whatever for the daily banking operations of the company, leaving this whole matter to be decided by the peculiar notions or ulterior designs of the banker; for the prohibition against the withdrawal of capital cannot be construed to relate to the certificates of funded debt pledged with the comptroller, as these are beyond the reach of the banker, and can only be given up to him on his complying with certain prescribed conditions.

“The committee are aware that it is said by the advocates of the New York system that the Legislature is bound to provide ample security for the note-holder, and for him alone, letting all others who choose to deal with a banking company, either as depositors or as purchasers of its bills of exchange, do so at their own risk. In this doctrine the committee do not concur. They view a law of the State which gives to companies corporate powers, as well as a right to issue notes for circulation, as to some extent a letter of credit to the company; they consider the Legislature to some extent responsible for the correct conduct of the company; and they feel confident that the practicing of frauds by such a company upon its depositors, and the purchasers of bills of exchange, even should its note-holders be secure, would bring merited opprobrium upon the law, and discredit on those by whom it was enacted.

“The committee have also deemed it important to limit the total amount of banking capital authorized by the bill. The apprehension of excessive banking, whether well or ill-founded, has a tendency to deter prudent men from engaging in that business, while it can not fail to alarm the community with the idea of an inflated currency with all its wild speculations and extravagances, and as an inevitable conse-

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quence a subsequent contraction, which will bring ruin upon thousands, and distress all.

"It is said that the privilege to bank should be as free as that of engaging in any other kind of business; that if it be carried to excess, competition, with diminished profits, will insure a proper reduction; and that the evil will thus work out its own cure, as in other pursuits. Those who reason in this way do not, in the opinion of the committee, take a view of the whole ground; while they trace the analogies between banking and other individual pursuits, they omit to notice the points in which the analogy fails.

"If a greater amount of capital or labor be employed in farming, manufacturing, or commercial business, than can be made profitable, the loss falls upon those who invest their capital or labor. Those portions of the public who are engaged in other pursuits, so far from being sufferers, are, perhaps, gainers in consequence of the withdrawal of capital or labor from the pursuits in which they are engaged, and in the cheapening of the articles produced by those who have made these excessive investments. But when the currency of a country is too much inflated, a moral fever is produced through the whole body politic which injuriously affects every interest in the community, and cannot fail to draw after it subsequent exhaustion with its long train of sufferings and evils.

"It may be said, and the committee think truly, that there is no immediate danger of excessive banking in this State. There are those, however, and men whose opinions are entitled to respect, who think differently; and the entertaining of this opinion by capitalists will as effectually deter them from engaging in the business of banking, while they believe that it may be carried to excess, as if their apprehensions were reduced to certainty. The committee have, therefore, in the bill which they have now the honor to present, limited the amount of banking capital authorized by the bill to six millions of dollars.

"Such a limitation drew after it the necessity of apportioning the capital among the several sections of the State, according to the supposed wants of each, and the probability of its being supplied. In doing this they have taken into view the banking capital at present employed, and have assigned to the districts in which such capital now exists a less amount of that which is to be created by the formation of new companies."

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This bill, which became a law in February without any organic or perhaps material change, embodied in clear, concise, and accurate language, provisions intended to secure every benefit and provide against every danger referred to in the report. Mr. Kelley's skill in drawing bills, which had long been known and universally acknowledged, was illustrated in this instance by the forcible and appropriate language which precluded every construction but the one intended. Without giving any details, it is perhaps sufficient to say that banks were established under the bill throughout the State, and from that time to the commencement of the Rebellion, when the present United States bank law superseded all others, the public was furnished with a sound currency, the bill-holder was protected, and few were subjected to loss or inconvenience while the banks were in existence, or when they were wound up and their charters surrendered. From its adoption the banks organized under it commanded the respect and confidence of capitalists every-where, and at no time did any portion of the public entertain any doubt as to its security, or any fear of loss. The capitalist, the borrower, the note-holder, and the depositor were brought together on equal terms; and the rights of each were so defined and secured that fraud, imposition, and oppression were rendered difficult, though, perhaps, not impossible.

If any one will take the trouble to compare the bank law of the United States with that of Ohio, he will find that nearly every material provision is found in them

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both. He will also find that there is a striking similarity in the language of many sections. The law of Ohio seems to have been the model used, and was only so modified as to be adapted to the United States instead of to Ohio alone.

CHAPTER XII.

REVENUE REFORM.

Revision of the revenue system.—Mr. Kelley's report.—Equalization of taxation.—Sound economics.

While Mr. Kelley was engaged upon the bank law, he was not unmindful of the difficult task of revising the revenue system of the State, which he was expected to undertake. He had many years before referred to its defects, and in general terms pointed out the remedy. That remedy involved a radical change in the system, in regard to which the public is at all times very sensitive. With a view, therefore, of bringing the subject, as early as practicable, before the Legislature and the people, he, in the early part of the session, offered a resolution, which was adopted, requesting the Auditor of State to furnish as soon as practicable "the net revenue applicable to the payment of interest on the debts of the State during each of the last six years," specifying the net revenue derived from the public works, the amount of taxes in aid of such revenue, and the amount from other sources, the amount of interest paid, and the deficiency of the revenues to meet the interest during each of those years, and the sources from which the deficiency was supplied.

In answer to this resolution the Auditor made a report

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which was referred to the committee on finance, of which Mr. Kelley was a member, and he, on behalf of the committee, prepared, and on the 7th of February submitted, a report which had much influence on subsequent legislation. The following extracts from the report, and abridgment of other portions of it, clearly show the financial condition of the State, and the necessity for immediate and radical changes in its policy and laws. After reciting the resolution, and what it was designed to elicit, the committee express their regret :

“ That the Auditor has not been able to communicate to the Senate the desired information in a more full and intelligible form. They will, however, attempt, from official documents, and mostly from the reports of the Auditor, to supply this deficiency and lay before the Senate, in a condensed shape, such information as will enable them to form a tolerably accurate idea of the financial condition of the State, and to judge of the necessity of providing other sources of revenue.”

They then state in detail the interest account for the six years from 1839 to 1844 inclusive, as follows :

First. The interest paid each year.

Second. The amounts received and applicable to the payment of interest from canal tolls, taxes, and every other source.

Third. The excess of interest over the revenue applicable to its payment. After making every allowance and every deduction which could be reasonably claimed, there still remained “ a deficiency of accruing revenue applicable to the payment of interest on the debts of the State for the last six years of \$720,858.05.”

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“How, with this large deficiency in the interest fund, has the interest on the State debt been paid, is an inquiry which will naturally present itself to the mind of every citizen of Ohio who is anxious to preserve unimpaired the credit of the State. In order to answer this question, the reports and proceedings of the Fund Commissioners, as well as of the Auditor, were carefully examined, and it was found that the deficit each year had been supplied by temporary loans, anticipations of revenue by means of drafts, anticipations by deposits of county treasurers, loans of other funds from the State treasury, the use of funds obtained to pay contractors, and perhaps other like expedients.”

The committee then add:

“In regard to the impolicy of increasing the debt of the State, by the application of moneys to the payment of interest which do not properly belong to the interest fund, the committee will take the liberty to quote from the annual report of the present Auditor of State, under date of December 2, 1839. After stating the deficit in the interest fund for that year at \$253,757.42, the Auditor proceeds:

“‘Which is annually supplied by additional loans, and appropriated to the payment of interest. This means of addition to a public debt is of a startling character, and certainly a most miserable financial operation. The sum of two hundred and fifty thousand dollars borrowed and applied to interest this year involves the application of \$215,000 [\$265,000] the next, admitting the debt to remain stationary, and so, from year to year, the process of compounding goes on until it assumes a most formidable and alarming character. The great error, and one which has proved an *ignis fatuus* to our public authorities, leading them still further into the labyrinth of public debt, has been the habit of reporting and regarding our domestic debt as accumulating revenue for canal purposes, and shutting their eyes to the fact that every dollar of that revenue so appropriated to the payment of interest, was itself borrowed, and accumulating interest for the future as certainly as if it had passed through the more formal routine of negotiation in Wall street or in London.’

“By the act of February 4, 1825, it is made the duty of the Auditor to assess such tax on all the property in this State entered on the grand list, and taxable for State purposes, as

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will produce, together with the net profits of the canals annually collected and paid into the Treasury for each year, an amount sufficient to meet the interest payable for such year on all loans, etc., exclusive of the sum collected for the sinking fund; and by act of March 16, 1839, making appropriations for new public works, this duty was again enjoined on the Auditor, and made irrevocable.

"The committee can not forbear expressing their regret that the Auditor, as well as his predecessor, has, for a succession of years previously to the last, levied an amount of taxes inadequate to the demands of the interest fund.

"To the impolicy of accumulating debt for the purpose of paying interest, the committee have already adverted. They have also called attention to the imminent danger of suffering the finances of the State to remain in their present deranged condition. It remains to consider by what means within the power of the General Assembly the deficit can be made up, so that the interest on the State debt can be paid from time to time as it falls due, without anticipating her revenues or resorting to temporary loans. Two modes of replenishing the interest fund have presented themselves to the committee.

"The first is to negotiate a permanent loan for the amount of the present deficit. Although this mode of extricating the finances of the State from their embarrassments may, perhaps, be preferable to the temporary expedients which have for several years been from necessity adopted, still the committee is not prepared to recommend it for adoption.

"The other, and in the opinion of the committee the only legitimate, mode of making up the deficiency in the interest fund is *by increasing* the revenues of the State applicable to that purpose. This, the committee is sensible, can not at once be done without such an increase of taxes as the people would find it difficult, if not impossible, to pay. Indeed, the taxes now imposed on property entered on the grand list for taxation are, in many instances, as high as the property can well bear. There is, however, in the State a large amount of property which, under our present laws, entirely escapes taxation.

"If our revenue laws shall be so amended as to bring this property upon the grand list for taxation, as the committee hope may be done, the revenue may be so increased, without making the taxes more oppressive than they now are, as, in

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the course of three or four years at most, fully to restore the interest fund and avoid the necessity of anticipating the revenues by means of temporary loans or otherwise.

“The committee are aware that by thus disclosing, as far as in their power, the true condition of the finances of the State, they run the risk of alarming the more timid of the holders of the stocks of the State.

“But they believe it to be important, not only to the interests of the State, but to the interests of the stockholders, that the representatives of the people, and the people of the State themselves, should be correctly informed upon this subject. To the General Assembly this knowledge is necessary, that the proper remedy may be applied before it is too late; and to the people it is equally desirable, that they may be able to judge of the necessity of imposing upon them additional burdens; and the sagacious creditor of the State, instead of feeling alarmed that the Legislature and the people of Ohio are boldly inquiring into the real condition of their finances with the view of applying the proper remedy, will feel renewed confidence in her integrity and determination honestly to meet her engagements to the uttermost farthing.”

At the same session, a bill was introduced on the subject of taxation and referred to the committee on finance. The bill did not become a law, but the report of the committee on the general subject of taxation contains additional and important suggestions, upon which legislation on this subject has been based from that day to this. The report was prepared and submitted by Mr. Kelley on the 17th of February, and the material portions of it are as follows:

“That from an examination of the financial condition of the State, its accruing revenues, and the annual charges thereon, the committee are satisfied that an increase of revenue is indispensable. Although the State may continue, by resort to temporary expedients and extraordinary means, to pay the interest on her funded debts, as she has heretofore

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done, without an increase of her revenues applicable to that purpose, the committee deem it extremely hazardous, as well as impolitic, to rely on means and expedients liable to be affected by so many unforeseen contingencies, for the accomplishment of an object of such vital importance to the honor and credit of the State, as is the punctual payment of the interest on her debts.

"For a more full statement of the present condition of the finances of the State, and the views of the committee upon that important subject, they ask leave to refer the Senate to their report (that of February 7th) relative to the condition of the interest fund.

"If it be conceded that an increase of revenue is necessary to meet the current expenses of the State government, and insure the punctual payment of interest on the State debt, the question, 'how is this increased revenue to be obtained,' presents itself for consideration.

"It is evident that this object can be attained in one or the other of two ways. First, by increasing the rate of taxation on property now entered on the grand levy for taxation; or, second, by adding to the tax list property not now entered thereon.

"To the first mode there are, in the opinion of the committee, insuperable objections.

"On a large portion of the property now entered on the list, the tax is already so high as to preclude the idea of increasing it."

"Whenever the public burdens are necessarily heavy, justice, as well as good policy, requires that these burdens should be made to bear as equally as possible, in order that they may bear as lightly as possible, on those who are compelled to sustain the weight. Such is not the case. Property listed for taxation is at present valued so unequally that, while the tax on one portion is equivalent to its net income, on the other portions it amounts to not more than one-tenth or one-twentieth part of the profits which they yield. But the injustice of suffering a large proportion of the most productive property of the State entirely to escape taxation, while property less profitable to the owners is made to bear the whole burden of sustaining the public revenues, is still more glaring.

"Fully impressed with the belief that sound policy, as well

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as impartial justice, requires each individual in the community to contribute in proportion to his property and income, to the support of that government by which his life, liberty, and estate are protected, and to those expenses by which his property is made productive, the committee can not hesitate to express their decided conviction that a law should be enacted providing for a fair and equal cash valuation of all the property in the State, both real and personal, for the purposes of taxation, except such as reasons of public policy require to be exempted. The necessity of providing means for increasing the revenues of the State renders this measure still more important.

“The committee are fully aware that it has been the policy of the State, from the first organization of its government, in valuing lands, other than town lots, for taxation, to exempt the value of the improvements made upon the land. This policy was adopted when far the greater proportion of the lands of the State was owned by non-resident proprietors.”

“Most of the tracts or parcels of arable land sufficiently large for a farm, are now more or less improved, and it is no longer necessary to abstain from taking improvements into view in determining the value of land for taxation, from a fear of preventing or discouraging the making of those improvements.

“On the contrary, imposition of an equal tax on unimproved lands and on those that are in a high state of cultivation has a direct influence to prevent the purchasing of new lands for the purposes of cultivation. For, when a man has expended his whole means in buying a piece of unimproved land, and is expending his time and labor in bringing it to a state of cultivation, it is oppressive to compel him to pay the same amount of tax as is imposed on a highly cultivated and profitable farm in the immediate vicinity, containing an equal number of acres.

“While a principle so unjust is suffered to remain in our system of levying taxes, it must necessarily discourage the purchasing and opening of new farms. It may be said that the imposition of heavy taxes on unimproved lands will induce the holder to sell them. This inducement, however, will produce little or no effect if, by our laws, still greater impediments are thrown in the way of the purchaser; for where there are no buyers, there can be no sale.

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“The committee are also aware of the argument frequently adduced against assessing the value of improvements on land on the ground that it operates as a tax on the product of labor, and, therefore, discourages productive industry. But ‘where is the property that is not the product of labor?’ Productive industry may be regarded as the creative power by which every thing which we denominate property is produced; and the committee can see no reason why the property of one man, obtained by labor, and invested in unimproved lands, in town lots, in horses, in cattle, or other taxable property, should be subjected to taxation, while the property of another, invested in improvements on his farm, and equally productive, is suffered to escape.

“Many and just complaints are now heard of the existing inequalities in the valuation of real estate for the purpose of taxation. In numerous instances tracts of land are entered upon the tax list at from fifty to one hundred dollars per acre, while lands of equal value, separated from the former only by imaginary lines, are assessed at not more than eight or ten dollars per acre. A similar inequality, but less in degree, exists in the valuation of lands situate in different counties.

“Although discrepancies of this kind, to a greater or less extent, are incident to all human acts, still a due allowance for errors in judgment will not account for the enormous inequalities which are found to exist in the valuation of lands for taxation. These gross inequalities can only be accounted for from the absence of any definite and intelligible rule or condition for determining the value of lands. If these lands were required to be appraised at their true value, inclusive of all improvements thereon, a criterion of the value would easily be found in the price for which the same or similar lands have recently been sold, or in the price demanded by the owner, if held for sale. But when the improvements are to be excluded, and a value altogether hypothetical and imaginary is required to be affixed to the land, supposing it to be a state of nature, so indefinite is the rule, and so great the latitude given for construction as to leave both the judgment and the conscience of the appraiser, like a ship at sea without rudder or compass, entirely without guide or restraint.

“A still more serious objection to the present revenue laws of the State is to be found in the fact that real estate is made to bear an unequal and unjust portion of the burden

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of taxation. It will be seen, by reference to the last annual report of the Auditor of State, that lands, including town lots and buildings thereon, are assessed at \$109,142,152, while personal property of every description is assessed at only \$27,000,514. From which it appears that more than four-fifths of the whole amount of taxes of the State are assessed on lands.

“The committee have not the means of ascertaining, with perfect accuracy, the relative value of the real and personal property of the State. They are, however, of opinion that personal property constitutes at least *one-third*, instead of *one-fifth* of the whole.

“It is apparent that if the personal property which now escapes taxation were made to pay its fair proportion of tax, lands would be relieved from taxation to that extent.

“Much of the personal property which under our present laws is exempt from taxation is the most productive property in the State. Money or capital employed in purchasing notes, bonds, and mortgages, in buying and selling money and exchange, in various kinds of traffic, and manufacturing operations, in ships, vessels, and steamboats on the lakes and on the Ohio River, in the furniture of extensive hotels and taverns, stage-coaches, and horses, may be taken as specimens of this class of property; and no good reason can, in the opinion of the committee, be assigned for exempting this property from taxation. Costly furniture, although producing no income, may be considered as indicative of wealth of the owner and his ability to pay taxes; and as a luxury, has ever been considered, by enlightened legislators, a proper object for taxation.

“Nor is it easy to discover a satisfactory reason for continuing to tax property vested in horses and cattle and permitting that vested in sheep and swine to escape. If it be said that hogs are fattened on the annual products of farms which are taxed, and that therefore the hogs themselves should not be taxed, it may be replied with equal force that cattle and horses are also raised and fed on the yearly products of farms.

“The taxation of all the property of the State, both real and personal, except such as from reasons of public policy may be exempted, according to the true value thereof, is the only *just*, because it is the only *equal*, mode of levying taxes. The adoption of this great principle into our revenue laws, while it will add largely to the apparent value of taxable

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property of the State, and will provide the means for such an increase of the annual revenues of the State as will avoid the danger of a failure to pay the interest on our public debt, will to a considerable extent relieve those who now pay the principal part of the taxes. The taxes paid by the owners of land, and especially of real estate in towns, will, in the aggregate, be greatly diminished; and this deficiency will be more than made up by taxes levied on property which at present pays little or nothing.

Each of these reports was carefully prepared for a specific purpose; the first to demonstrate the necessity of changing the present policy, by showing that its end was inevitable bankruptcy; the second, to show with equal clearness that to require all the property in the State, both real and personal, to bear a portion of the public burden, according to its true value, is the only just and equitable mode of taxation; and that by adopting this mode the duplicate will be increased so as to render the share of each comparatively small, and at the same time produce enough revenue to discharge all the liabilities accruing under the State government. They aided very much in preparing the public mind for the radical change which was so necessary, and also in some degree directed attention to this subject in the selection of candidates for the next General Assembly. A portion of the members of each branch were selected for the purpose of aiding in accomplishing the end suggested. Many also were selected, as the proceedings too clearly show, for the purpose of defeating every effort of the kind, and even to embarrass the State in the payment of its accruing liabilities.

CHAPTER XIII.

EQUALIZATION OF THE TAXES.

Continued financial troubles.—Mr. Kelley's proposal for equalization of the taxes.—A bold step.—Mr. Edgerton's speech.—Mr. Kelley's reply.—His resolution adopted.—The contest continued.

When the Legislature assembled in December, 1845, it soon became evident that the same spirit which animated a portion of the members of the Legislature of 1841-2 to advocate repudiation, and to endeavor to prevent the payment of the liabilities of the State, to cry down and depress the value of State stocks until they could hardly be sold at any price, was to be exhibited anew in complaints that stocks were sacrificed in order to pay the liabilities of the State and save its credit and honor. The same spirit induced members not only to complain of such sales, but also to make use of them as an argument against any material change in the revenue laws. It exhibited itself in an unwillingness to provide for the public indebtedness, notwithstanding a considerable portion of it was created and used for the construction of canals which were then yielding a large net revenue to the State. Those who were imbued with this spirit were bitterly hostile to all chartered banks, and declared both a willingness and a desire to destroy the value of State stocks, that they might by such means destroy the

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banks. In order to illustrate the feeling which existed in regard to the banks and State stocks, and which culminated in a formidable and violent opposition to the proposed change in the revenue laws, it is only necessary to introduce some of the debates which preceded the introduction of the bill for that purpose.

On the fourth day of the session Mr. Kelley, from the committee on finance, introduced a preamble and a joint resolution, reciting that a revenue sufficient to defray the expenses of the State and of counties and townships, to support schools and the poor, and to pay the interest on the public debt, requires the imposition of heavy taxes; that the present system is grossly unequal, and fails to apportion the public burdens among the people in the ratio of their property, or of their ability to pay taxes; and that the exigencies of the State, as well as equal justice to its citizens, requires the adoption of a system more equal in its operations and capable of producing more revenue; therefore,

“Resolved by the Senate and House of Representatives, That it is expedient, at the present session of the General Assembly, to adopt a system of taxation that will impose upon all the property of the State, both real and personal, except such as shall be expressly exempted by law, according to its true value, an equal per centum of taxation.”

This resolution was introduced in order to procure in advance the adoption of a principle upon which a bill might be based. It should be borne in mind, as has been stated, that previous to this time the burden of taxation

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was borne by real estate and a few specified items of personalty. Realty sustained most of the burden. The principle set forth in the resolution as the proper basis of taxation had not then been adopted and enacted into a law in any State or nation.

We have been living under revenue laws substantially copied from the one adopted at this session more than forty years, and few of the present inhabitants are familiar with any other rule of taxation, and can hardly imagine that any other could be seriously entertained. The subject was then, as it is now, a delicate one, and the public was very sensitive in regard to it. It therefore required the preliminary steps, which were adopted the previous session, to prepare the public for the adoption of a plan for the accomplishment of what is now regarded as a financial system combining justice, equality, and efficiency more perfectly than any other, and as settling more clearly than any other the great problem of taxation. It was then a bold step to take. A bold man took it, in the presence of the fiercest partisan opposition, which aimed, by defeating it, to break down the State credit, and with it our banking and monetary system.

The resolution relating to taxation being before the Senate on the 10th of December, the following was offered by Mr. Edgerton as an addition:

“Resolved, That all loans made by the several banking institutions in this State shall be taxed as money at interest, the same as money loaned by individuals.”

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This addition gave rise to an animated discussion. The portions of it and of other discussions which follow are copied from the report of them in the *Ohio State Journal*. It is due to Mr. Kelley to add that he seldom spoke from notes, and rarely revised the report of his speeches.

“Mr. Edgerton said he perceived that the Whig party had got itself into a dilemma from which it could not extricate itself without the aid of the Democratic party, and he hoped such aid would not be given. The time has arrived when we must increase the per centum on the grand levy, or bring new objects of taxation upon the list, or else the State must repudiate. By the legislation of last winter, you have put it out of our power to tax banks except upon their *profits*, while individuals are taxed upon their property. From present indications, it appears that no *ad valorem* law can be passed at this session without some Democratic votes, and I believe there is not a Democrat in the Legislature who will vote for the proposition before the Senate, unless the banking institutions are placed upon the same footing as individuals. The Senator from Muskingum thinks the passage of this resolution would have a favorable [an unfavorable] influence upon the credit of the State, and the price of its stocks. IF BY ANY EFFORT ON MY PART I COULD DEPRECIATE THE VALUE OF OUR STATE STOCKS IN THE EASTERN MARKETS, I WOULD CERTAINLY DO SO, *because these banks are based upon those stocks, and if the State stocks go down, so must the banks.*”

“Mr. Kelley said he had endeavored to obtain the floor before his young friend from the north-west made his second speech on the same question, but he had failed in catching the speaker's eye. He now wished to call the attention of the Senate to sentiments and motives which he had been astonished to hear that Senator [Mr. Edgerton] advance. He did not wish to misrepresent the Senator, and if, in reciting the substance of what he said, he did not do it correctly, he asked the Senator to correct him. ‘I understand the gentleman to say,’ said Mr. Kelley, ‘that the party in the majority on the floor were in a dilemma. That the revenue was inadequate to pay the interest on the State debt. That the revenue must

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be increased, or repudiation would be the inevitable result. That the majority dare not increase the *per centum* of tax on the grand levy as it now stands, for that would prostrate the party. That they therefore sought to adopt a more just and equal system, and increase the amount of taxable property by requiring all the property of the State to be entered on the grand list at its true value. That this could not be done because the law creating the banks had provided for taxing them on their profits, and it was out of our power now to place the bank capital on the same footing as other property. It would be changing the contract, and, therefore, would be unconstitutional. That he and he hoped his political friends would vote for no tax law that did not place bank capital on the same footing as other property. That he understood some of the Whigs would not vote for this proposed system, and it needed Democratic votes to carry the measure, and, if repudiation was the result, the Whigs might thank themselves for it. They had tied their own hands, and he [Mr. Edgerton] appeared to exult, to feel pleasure, in anticipating the result.

“‘Am I right?’ said Mr. K.

“‘Exactly so,’ said Mr. E.

“‘I must then,’ said Mr. Kelley, ‘express my deep regret, as well as astonishment, at hearing such sentiments avowed on this floor. I will give the gentleman credit for the frank avowal of his views, while I can not withhold my deep detestation of his doctrines. He is willing to see the public faith violated, the credit of the State prostrated, its prosperity blighted, the deep and damning stain of repudiation forever stamped upon her now fair reputation, that the party to which he belongs, and which has lost its ascendancy by its own rashness, may be again brought into power.’

“‘I will not,’ said Mr. Kelley, ‘condemn him, but if I thought myself capable of entertaining such sentiments, I should despise and detest myself, I should think I ought to be shunned by every honest man, scouted from society, and driven from the State.’

“The Senator had expressed a wish to see the stocks of the State rendered worthless, so that the banks organized under the law of last winter, which were entirely based on those stocks, might be prostrated. The gentleman has fallen into an error in point of fact, but seven of the twenty-three banks organized under that law were based on those stocks.

“The Senator said he would even go further; he would as-

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sist in depreciating State stocks so as to break down the banks founded on them. 'Now,' said Mr. Kelley, 'let us see what would be the effect of rendering this State stock worthless. It is pledged with the Treasurer of State as security for the redemption of circulating notes of the banks. Take away the security, or render it worthless, and what is the probable consequence? The money falls dead in the hands of the holders, in the hands of the poor laborer, who made it to purchase clothes and food for his family, bread for his children. And is *this* the result which the gentleman seeks to produce? Is this his *Democracy*, his love for the people? If it is, he has a different mode of showing his love for the people from that which animates my bosom.'

The discussion of the resolution was continued by different members, and embraced in its range the whole subject of taxation, and Mr. Kelley closed it in a speech in which he recapitulated what is contained in the report at the previous session, established, by unquestionable statistics, the inequalities which resulted from the existing system and laws, and from the United States census returns of 1840, and other sources, demonstrated that the real and personal property which ought to be taxed in the State amounted, at its fair value, to at least five hundred and twenty-six millions of dollars, instead of \$144,160,469, the taxable value as returned that year, and then proceeded:

"If then the absolute necessity of increasing our revenues and the obviously unjust operation of the present tax law demand a change of the system, or such modifications as will make it more productive and less unequal in its operation, shall we at once found it on principles which all agree are the most correct and equitable, adopt the only system by which we can impose upon every citizen an equal share of the public burden in proportion to his ability to sustain it? or shall we attempt to patch up a law already incongruous and obscure

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in its provisions in consequence of the loose manner in which it was drawn and the frequent changes it has undergone, founded too upon principles so manifestly unjust, because unequal in their operation, as to form the subject of complaint throughout every section of the State?"

"He had no hesitation in saying that the first of these alternatives should be adopted. . . .

"If then it be right, if it be necessary to adopt a more equitable system of taxation—as I trust every one is convinced it is—it remains to inquire, when shall it be done? To this I answer without the least hesitation, *now is the PROPER time*. It is never too early to do right—to redress a wrong. I know, as well as any man, the difficulties which surround this object—I am fully aware of the sensitiveness of the people upon the subject of taxation—and how easily the most just and equal law for levying the tax can be misrepresented by the unprincipled and designing demagogue. I know there are some who fear to jeopardize their popularity by voting for any law upon the subject of taxes, unless it be to reduce them. But I have yet to learn that the people are so destitute of intelligence, so lost to all sense of justice, as to condemn their agents, when, with a single eye to the public good, forgetting their party predilections, they fearlessly do that which is right in itself, and which is imperiously demanded by the necessities of the treasury.

"Let us no longer rest in false security; let us no longer slumber on the brink of repudiation; but rouse ourselves, and like men boldly look the danger in the face, and prepare to avert that worst of all calamities which can befall a State—the loss of its character for punctuality, for integrity, and for honor. It is vain to shut our eyes to the fact that we can not long continue our downward course, sinking year after year deeper and deeper in debt, without at last arriving at that lowest point of degradation—repudiation."

Mr. Kelley here asked the indulgence of the committee to read a short extract from a foreign paper, the *London Times*.

A writer in that paper, after stating his loss on Illinois bonds, adds:

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"When my boy asks me why he is stinted of the education which he had a right to expect from me, what can I answer save 'the Americans have robbed me?' And thus will the shame and sorrow pass on to another generation. The loss is written off in my ledger, but the disappointment of my hopes in the young race is indelible, and the wrong is irreparable. The Americans may proceed in a successful course of commercial and political triumph; they may cover continents with their race and the ocean with their fleets, but the stain remains fixed and forever. They are not an honest people; and, believe me, it is not our writers but their swindlers which have brought on them, nationally and individually, the contempt of the world. Their bonds are driven from the Bourse, and one is now as much startled at meeting an American in society, as to hear of Robert Macaire at Almack's."

"We may affect to disregard the opinion of other nations," continued Mr. Kelley, "but it is all affectation. We do and we should value the good opinion of other civilized nations with whom we hold commercial and friendly intercourse; and, when we shall be sunk so low as to disregard the good opinion of the Christian world, we shall indeed have arrived at a low state of moral degradation."

"In years gone by, as the Senator from Clermont who acted with him on that occasion would bear witness," said Mr. Kelley, "he had raised his warning voice in the other branch of the General Assembly against the reckless expenditure of money on works which the public good did not then demand, and which, if undertaken at all, should have been postponed until the State was able to prosecute them. He had then told the House that their hands must be stayed, or bankruptcy would be the result. But his warning had been disregarded; selfish views and local interests had prevailed; and the consequence was a State debt of nearly twenty millions. He could tell how the public money had been squandered, of the neglect and unfaithfulness, not to say the downright dishonesty, of public agents, but this was not the time nor the occasion. We have now," said Mr. Kelley, "to deal with the present and to look out for the future, not mourn over the past. Let us not fear to examine our condition, but like men probe the wound to the bottom, and fearlessly apply the remedy. But if this course shall not be adopted, if others shall timidly shrink from the performance of their duty, if repudiation

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shall envelope our beloved State in a mantle of shame, driving our most worthy citizens from our borders, and preventing from coming among us all who are unwilling to share the ignominy of violated public faith, I, at least, will wash my hands of the foul stain. I will not stand tamely and see the deed committed."

The addition proposed by Mr. Edgerton was then rejected, and the preamble and resolution offered by Mr. Kelley in behalf of the finance committee were adopted.

On the 29th of December, Mr. Edgerton offered the following preamble and resolution, occasioning a discussion in which Mr. Kelley for the first time in his own behalf stated the circumstances under which the bonds of the State were sold at less than par, and also under which he had pledged his individual credit to more than he was worth in order to save the State from protest and dishonor. The discussion also discloses the bitter hostility he afterward encountered during the passage of the bill to tax all property in the State according to its value :

"*Whereas*, the Governor of Ohio, in his last annual Message to this General Assembly, says that arrangements have already been made to pay the liabilities of the State falling due in January and July next; and, *whereas*, the Canal Fund Commissioners, as appears by their report, bearing date the 26th inst., have been forced to make temporary loans to the amount of \$363,564.40, to pay the interest on the State debt due on the 1st of January next, without making any provision for the July interest, no part of which loans are reported to the Auditor of State, nor by him embodied in his annual report; and, *whereas*, the Treasurer of State has issued circulars calling upon the several County Treasurers for the State's proportion of the taxes of 1845, collected by them, to be remitted to the Treasurer of State in order to meet the January interest; and, *whereas*, these facts seem to

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contradict the statement made by the Governor that arrangements had already been made to pay the July interest; therefore,

“*Resolved*, that the Governor be and hereby is requested to report to the Senate, at his earliest convenience, by whom and with whom the arrangements alluded to were made, and such other matters connected therewith as will fully advise the Senate of the nature of the transaction.”

“Mr. Kelley moved to lay the resolution on the table.

“He said the statement of the finances of the State had gone out. So much as is necessary or material to be known is known. He did not see the necessity for this continued agitation of this matter. The gentleman offering this resolution had declared to the Senate and the world that if by any act of his he could reduce the value of the State stocks so as to break down the banks which held them as securities, he would do so. To accomplish this object was, perhaps, his motive for agitation. Certainly no good could result from it.

“The gentleman intimates, by his resolution, that the statements of the Governor are incorrect, or that he had put forward false statements. The Governor had undoubtedly based his remarks upon the statements of the officers of the State; and the detailed information called for was probably not in his possession. The Governor had announced that arrangements had been made to meet the interest soon falling due on the State debt.

“He [Mr. Kelley] was prepared to say that *positive provisions* had been made for the payment of the January interest.”

[Mr. Edgerton said that he did not doubt that. He wished to know particularly about the July interest. The Governor stated that arrangements had been made for the payment of that.]

“*Arrangements*,” continued Mr. Kelley. “This is a very comprehensive word. It was well known that it was frequently necessary to anticipate the revenues of the State for the purpose of collecting in time the money necessary to meet its liabilities. The canal tolls were sometimes rendered available before the time of their coming regularly into the treasury. So with other resources of the State. It might be that arrangements of this character were in progress.

“He was not prepared to say what the arrangements for

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meeting the July interest were. He presumed the officers of the State spoke advisedly when they affirmed that they were in progress.

"If the Auditor is correct, the prompt payment of the July interest is *certain*. Why then waste time in inquiries such as these? Why continue to agitate the public mind? He had stated on a former occasion the actual financial condition of the State, and what he conceived to be the true policy of the State in regard to it. The adoption of that policy would place us beyond the necessity of any temporizing expedients. The perpetual agitation of the financial condition of the State here may serve to depress our stocks, and make them foot-balls of the dealers in stocks. It could serve no other purpose. He was prepared to go as far as any man to place this matter right and apply the legitimate remedy. But if this matter was to be brought up so often, it might be well to inquire into the origin of these deficiencies, which were so fruitful a source of contention. Unquestionably the debt had been greatly increased by undertaking the construction of Public Works, which should not have been undertaken, at least at the time they were undertaken, and which probably would not have been undertaken had wise councils prevailed. What party was in the majority at that period? A correct answer would doubtless designate the party which was responsible for a large proportion of the public indebtedness.

"We may go one step further, and contrast the cost of the earlier works of improvement with the later ones. The latter, though not nearly as well constructed, cost two and a half times as much as the former. Under the direction and control of what party were these works carried on? It required no one very deeply versed in our political history to tell.

"Now, let us look a little further. The Auditor of State is directed to levy sufficient tax to meet the liabilities of the State. The Auditors immediately preceding the present incumbent, who has held his office scarcely a twelve-month, in neglect of their duty, had allowed the State to run behind to the amount of \$1,500,000. It was this deficiency, thus allowed to accumulate, that caused the embarrassments in which the State was not long since involved. The Fund Commissioners had no power to levy taxes or collect tolls. That was a power intrusted to others. Their only resource was to dispose of an amount of the stocks of the State, as the

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law authorized them. This they did, and at considerable loss.

"The indebtedness was accumulated, then, first, by the construction of works not then called for, if ever; second, by a gross want of economy in public officers who had managed these works; and, third, by the neglect of the Auditors to do their duty.

"Now, then, what is to be done? Certainly, to provide for the future, not to go back to say who did this or that, or to decide who was most to blame. It was useless to refer to the past, unless to take warning from its errors.

"The passage of the resolutions like the one pending could have no good effect. The agitation which it would keep up would tend to depress the credit of the State. He hoped the resolution would lie on the table.

"Mr. Edgerton said he supposed his resolution would provoke discussion. It had done so. He was aware that certain charges had been made against him, both in and out of the Senate, of an intention to reduce the stocks and invalidate the credit of the State. He understood his own objects, and knew the tendency of his resolution. He questioned whether any provision had been made for paying the July interest, notwithstanding the statement of the Governor's message that arrangements were made to meet that interest. He thought there was an intention to cloak up the real condition of the State. The Canal Fund Commissioners report that they have borrowed \$364,000. The Treasurer has called upon the county treasurers for the State tax; and this is all to meet the January interest.

"Can it be true, under these circumstances, that arrangements are made to meet the interest in July? He believed the Governor had been misinformed by somebody. If his inquiry, by unveiling our actual condition, depreciated the stocks of the State, let it be so; all the better.

"If the fact as stated by the Governor is correct, the arrangement is dependent upon loans from the banks, which loans are contingent upon the passage of the contemplated bill to adopt a system of taxation which shall provide additional revenue to the State. He apprehended this was the arrangement referred to, and to ascertain if he was correct was one object of his inquiry.

"There was a feature in the past financial history of the State which was an inducement for him to act in the matter.

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The State had always been dependent on the banks; they had been linked together in their policy. To break up this dependency was one of his primary objects. The banks had always made their greatest profits out of the poverty of the State.

"The gentleman (Mr. Kelley) had alluded to the origin of the indebtedness of the State. There was one fact which he would like to mention in reply. He (Mr. Kelley) and others had sold the stocks of the State at sacrifices amounting to nearly \$500,000.

"[Mr. Edgerton here proceeded to give certain statistics.]

"Those statistics clearly establish that, in 1841-2, and when Mr. Kelley was Canal Fund Commissioner, State stocks were sold—

"The par value of which was . . .	\$1,487,200 00
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"The amount received was . . .	1,031,711 78
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"The loss of the State was . . .	\$455,488 22
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"He thought the 'simplest history of these transactions were their best analogy [*sic.*].'

"It was stated, indeed, that these sacrifices were necessary; but, necessary or not, it could not be denied that the State had lost heavy amounts of money by these transactions. 'That,' continued Mr. Edgerton, 'can not be charged upon us of the minority.'

"But who profited by the State loss? The bankers. It was they who fattened and grew rich upon the losses of the State. And against a system which permitted of this connection and these results he would wage an eternal warfare, 'cry havoc, and let slip the dogs of war.'

"He would again inquire, in conclusion, how the June and July obligations of the State were to be met? He could conceive of no way, unless as he had already explained by an understanding with the banks, based upon the contingency of the passage of the proposed tax law. He hoped, by the passage of his resolution, to ascertain the facts in this matter—whatever effect their development might have upon stocks or credit."

"Mr. Kelley said he did not propose to follow the gentleman in a reply. He [Mr. Edgerton] had, as was quite common with others of the same party, taken occasion to taunt him [Mr. Kelley] with having sold the stocks of the State at

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less than their face value. He admitted it, he had never concealed it; and the circumstances attending that sale were before the world, and he was willing to submit his conduct to its judgment. When the credit of the State was tottering almost to its overthrow, at a time of unexampled depression in the financial world, when the stocks of the General Government could find no sale in the market, and when the bonds of the great and rich State of New York would not bring seventy-five cents on the dollar in her own commercial metropolis, and when she was forced to permit her obligations to fall due, from utter inability to meet them at that time, he had, in conjunction with those who acted with him, resorted to the only means which was left to save the honor of the State, which means, he might add, they were authorized to resort to, by a law of the State passed to meet that special emergency. And at that time, and under these circumstances, he became personally responsible in behalf of the State for more than he was worth, in order that she might pass safely through her severest trial. And he had done so, too, when he was warned by gentlemen of high standing among his political opponents, to beware how he committed himself, because there were those of his foes who would willingly have the credit of the State prostrated, if thereby Alfred Kelley could be involved in ruin. There were those who would have gloried in the lost honor of the State, in her disgrace and misfortune, if he had fallen with her.

“This was done at a time, also, when repudiation was talked of in this capital, and when a proposition was pending to take away from the Auditor his power to levy these taxes upon which the financial safety of the State depended. At a time, too, when a *protégé* of a man high in public station, a man who was called the Jupiter Tonans, the Thunderer of the opposing party, wrote to an editor in the City of New York, stating that the doctrine of *repudiation* was gaining ground, and had infected the Legislature, and contemplating a total failure of the State to meet her obligations.

“He had no occasion to regret his conduct at that time and under these circumstance. On the contrary he gloried in what he had done. He thought it neither just nor magnanimous in opponents to taunt him as having acted a dishonorable part. It came with an ill grace from them who had never raised a finger in behalf of the State, to accuse him of dereliction of duty, and of having trifled with the interests

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of the commonwealth. It was true he had made sacrifices to save the credit of the State, and none could regret the necessity more than he did. They were made to avert great and overwhelming calamities. The report of the commissioners appointed to examine the transactions of the Fund Commissioners would place his conduct in its proper light, and exculpated him from all censure.

"Mr. Kelley recommended those who were so free in their condemnation to look back and see by whose acts the sacrifices, so often alluded to, were made necessary. They should show that something better could have been done, before passing their censure so freely.

"In respect to this resolution, he could only repeat that he considered its adoption entirely unnecessary for any good purpose. The gentleman says he shall continue the agitation of this matter day after day. What is his object, unless it be the one he so boldly avowed a few days ago? He then declared that if by any act of his he could reduce the value of the stocks of the State he would do so. Was not this one of the "acts?" Did the gentleman expect that his party would be enabled to get into power by this course? Perhaps so. But he could tell the gentlemen that power gained by such means would be vain to those who gained it.

"They would reign over a prostrated, desolated State. If the gentleman chose to bring this subject up daily as he threatens to do, he [Mr. Kelley] could say that there was a power here to put it down as often."

After further discussion the preamble and resolution were indefinitely postponed.

CHAPTER XIV.

PASSAGE OF THE TAX LAW.

Mr. Kelley's speech.—Passage of the bill in the Senate.—Its passage in the House.—Features of the law.—The succeeding political controversy over it.—Its success and effect.

The reports and discussions on the general subject had prepared, as far as such proceedings could do so, both the public and the Legislature for the bill which was introduced into the Senate on the 6th of January, 1846.

The hostility which had been previously manifested in the Senate, and in some of the public prints, continued with the same if not with increased intensity. That hostility was political, and regardless of the public good. It proceeded from the motives and desires of the partisan and mere politician, and was not worthy of statesmen. A persistent effort was made to render the passage of the bill a party question. During its progress through the Senate many amendments were offered with a view solely to their political effect. And no opportunity was neglected to ridicule it, or render it obnoxious to the public. Many amendments in its details were proposed and adopted, and on the thirteenth of February, when it was ready for a final vote, a motion was made to postpone its further consideration until the next December.

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Upon this motion Mr. Kelley made the following remarks :

" We are now asked," said Mr. Kelley, " to postpone this bill until the first Monday in December next; and are told as a reason for adopting this course, ' that this is an important measure, and should be well considered; we are told that the people should have a chance to examine and express their opinions on it.'

" It is true, said Mr. Kelley, " this is an important measure. It is true, too, that it is a *necessary* measure. But has it not been long agitated and carefully considered? Have not our State Auditors, for the last five or six years in succession, brought this subject before the Legislature and the people of the State urging the adoption of an *ad valorem* system of taxation, as the only system from which an adequate revenue can be raised, without injustice and oppression to a large portion of the tax-payers? All this has been repeatedly done by the principal financial officer of the State, the Auditor; a gentleman of the same political party as the senator who has made this motion to postpone. That gentleman [Mr. Brough], with the assistance of others whom he thought competent to advise on the subject, drew up a tax bill upon the same principles as the one pending before the Senate. That bill was presented by the committee of finance of the other House at the session before the last, and after some consideration, it was postponed to the first Monday of December then next. At the last session the same bill was reported on leave in the Senate; it was referred to the committee on finance, who amended its details and made a report to the Senate urging the propriety and necessity of its passage. That report had been before the people for more than a year, and its arguments had remained uncontroverted. It had received at least the tacit assent of the people. But the Senate, for want of time maturely to consider it and perfect its details, as was then said, had postponed it until the present session. At an early day of the present session the subject was again taken up, and the main principle contained in the bill now before us was deliberately adopted by the Senate in the form of a resolution; which, in effect, instructed the committee to introduce a bill to carry out that great principle, namely: *To tax property according to its true value.*

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"A bill was accordingly introduced; it was carefully considered in all its details; it was recommitted to reconcile all conflicting opinions as to some of its details; those conflicting opinions had been reconciled; the bill had been reported back, again carefully considered and amended by the Senate; and now, when it was about to pass, we are asked to *postpone it till the first Monday in December next.*

"*'To-morrow, and to-morrow, and to-morrow,'* says Shakespeare, *'creeps on its petty pace from day to day to the last syllable of recorded time.'* *'The first Monday of December next,'* and *'the first Monday of December next,'* and *'the first Monday of December next,'* to the end of time, is, according to the senator's theory, the proper time for adopting a great principle in adjusting the public burdens to the shoulders of the people which all admit to be right and just.

"I have been taught that it is never too early to do right, never too soon to redress a wrong. That a large portion of the tax-payers of the State are wronged, grievously wronged, by oppressive taxation, while others, much more able to pay taxes, are either partly or wholly exempt, is a fact no one who has any knowledge of the subject will have the hardihood to deny.

"And these are not the only ones who are wronged—no, Mr. Speaker, notwithstanding you have for years applied the moneys arising from the sales of school lands to pay the interest on the public debt, while you are, every time that interest becomes due, compelled to borrow large sums to pay that interest, and anticipate all your forthcoming revenues arising from tolls and taxes, you can not pay the laborers who keep your public works in repair. The State does not keep its faith with those who labor for the public, who earn their daily bread by the sweat of their brows. They come to the State Treasury; they knock at the door; they are admitted; but *the treasury is empty.* They go away disappointed. They come again, but still with the same result until *'hope deferred maketh the heart sick.'* Such things ought not to be."

Mr. Kelley here read part of a letter which he had received in behalf of two honest, hard working men, who had a claim of nine months' standing for work on the

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Ohio Canal on which they had received an order on the State Treasury more than six months ago, for upward of \$4,000; and whose property, the writer said, must be sacrificed unless they could get the money. This, said Mr. Kelley, is only one of the numerous cases of a similar character that had come to his knowledge.

“It is said we can get along and pay the interest on our public debt even if we do not revise our revenue laws. True, we may for a time longer go halting and limping along, as we have been going for some six years past, falling behind-hand some two or three hundred thousand dollars annually, and thus add this much yearly to our public debt. We may still live ‘at this poor dying rate’ a little longer, if times are in other respects prosperous and the money market easy. Or we may levy a greater per centum of tax on the taxable property of the State as it now stands on the grand levy. But, is it *right*, is it *just*, to do so? Is it right to make one man pay ten times as much tax on a piece of property as is paid by his neighbor on another piece of equal value? If taxes were merely nominal, this inequality would be a matter of comparatively small moment.

“But, taxed as we are, in many instances, to nearly the entire income of the property taxed, it is of the last consequence that taxes should be made to bear as *equally* as possible on all the taxable property of the State. It is wrong, it is unjust, it is *oppressive*, that one man should be borne down to the earth, literally crushed with taxes while his neighbor more wealthy and more able to pay than himself should enjoy almost an immunity from taxation.

“Let it not be said that the people have not considered this subject. They have considered it. It has been presented to them for years. They have been informed of the deranged condition of our finances, of the necessity of increasing our revenue, of the unequal operation of our present system, and of the plan now under consideration. They are too intelligent not to see the importance, the justice, the necessity, of the proposed change. They are too patriotic, too honest, not to be willing to bear each a fair proportion of the public burdens. And they will not condemn their representatives

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for promptly, honestly, and fearlessly doing their duty. I at least, for one, am prepared to appeal to them for the rectitude of my intentions, and the correctness of my actions in this matter.

“‘True it is,’ said Mr. Kelley, ‘some who now pay less than their share, and whose tax will be increased by the operations of this bill, may complain. But *of what* will they complain? They will complain *that they are now required to bear a just share of the public burdens from which they have heretofore escaped.* Can any one, not lost to all sense of justice, not lost to all shame, look an honest man in the face and utter this complaint?’

“‘Will it be said that this system of taxation, if carried into operation, will not immediately relieve the Treasury of the State from its embarrassment?’ I do not expect this remedy will work the instantaneous cure of a long standing disease, but it will clear the way and lay the foundation of a system that will give adequate and permanent relief. It will, when in full operation, enable us to raise a revenue sufficient to put a stop to further accumulation of debt, to pay interest, and gradually to regain the ground we have lost, and that too, with far less oppression to the great mass of tax-payers than the present laws impose on them. It will form a substantial basis on which we can safely predicate measures for temporary relief.

“‘All agree that it is both unwise and unsafe to suffer the large deficit, which has for some years existed, longer to continue, that we should no longer add interest to principal, and thus roll up the sum of the State debt, and all agree that *something* must therefore be done. If to avoid the manifest injustice of adding an additional per centum of tax on the property of the State, as now listed and valued, we resort to the expedient of bringing on to the grand list items of property hitherto exempt from taxation, as for example, sheep and hogs, will not the owners of these articles have just cause of complaint? May they not with reason ask, ‘why is our property singled out from the great mass that has heretofore been exempt from taxation, and made to bear alone the additional burden it has been found necessary to impose? We do not complain that we are taxed, for this we admit is necessary, but we complain that we are *unequally* taxed, for this is not necessary.’

“‘But there is another objection to this course. The taxes

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of the State have heretofore borne hardest on the great farming interest of the State, for their lands, their houses, and their cattle, could not be hid from the eye of the assessor, nor could the value of these items be kept a secret in the bosom of the owner, and, if we now add hogs and sheep to the present list of taxable articles, we increase the burden on this very class of our citizens. This would not be right. No, Mr. Speaker, *let all property be taxed according to its true value, and none will have a right to complain.*

“It has been apprehended by some that the present bill will increase the proportion of the whole taxes of the State paid by the farming interest. I have taken much pains to ascertain the operations of the bill in this respect, and for this purpose I have resorted to official documents to ascertain the true value of the various classes of property in the State, among which are the returns of the United States Marshal who took the census in 1840. I am, myself, pretty extensively acquainted with the value of lands and of real property in towns in the greater part of the State. And I have compared my estimates with the valuation of property in other States and towns in the Union, and, though the table which I now present to the Senate does not descend into fractions, and may in regard to some items be somewhat erroneous, still I am confident that it is a near approximation to the truth, and that the result will prove that the farming interest will, *as a whole*, bear a much smaller share of the public burdens than it bears under the existing system of taxation.

“True, their lands will be valued higher, but the per centum of tax levied on that valuation will probably be less than one-third of the per centum levied on the present valuation; while their cattle and their horses will, on an average, be valued at less per head, and on that valuation will pay less than one-third of the tax which they now pay.”

Then follows a table of all the different kinds of property as specified in the bill, with their estimated quantities and values, the aggregate value being \$255,000,000; and also a separate estimate of the value of the farming interest upon which taxes would be levied. Mr. Kelley then continued:

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"It will be observed that the estimate here made of the gross value of taxable property in the State falls considerably short of the estimate of its true value, which I had the honor of presenting to the Senate at an early period of the present session. That was an estimate of what I considered its *true* value.

"This is an estimate of the valuation as I expect it is to be taken by the assessors; for, with whatever honesty and vigilance they may perform their duty, I expect a considerable amount will escape. Besides, it will be borne in mind that the exemptions made by the bill, as it now stands, are considerably greater than those made by the bill as at first reported.

"If it be true, as I have no doubt the event will prove, that the farming interest will, under the operation of this bill, pay a less proportion of the taxes of the State than heretofore, the inquiry naturally suggests itself, 'In what manner will this deficiency be made up? If this class pays less, what ones will pay more?'

"I answer, the merchant, the money lender (who, even under the law of last session, in a vast number of instances, partially escaped, owing to the imperfections of the law and want of vigilance in carrying it out), the owner of valuable furniture, the owner of watches and pianos, the commission merchant, the great manufacturer, the machinist, the owner of ships, vessels, and steamboats, the owners of lots and houses in some of our largest cities, lease-holders of church lands, and many others of lesser note, will pay this additional tax and much more.

"But, Mr. Speaker, let me repeat, *something must be done*. We must either patch up an old structure, resting upon a rotten, because unjust and unequal, foundation, or we must adopt a new one, resting upon the eternal rock of justice. We can not escape this responsibility, if we would. And this one consideration is sufficient to determine my course, and should, I think, be sufficient to determine the course of every honest man. *It is just; it is right*.

"Let it not be said that we go counter to the wishes of the people in passing this bill. It is known throughout the State that it has been under consideration nearly the whole session. The principles upon which it is founded are also known; and yet we have not received a single remonstrance against its passage, but many petitions in its favor. In this case it may

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be truly said, 'silence gives consent.' A few individuals, who fear that they shall be required to pay a little more tax than they have heretofore paid—a few who fear, as there are always some timid souls who do fear, that to do right may, with some selfish people, be unpopular, have undoubtedly written to their representatives to oppose the bill. But these letters should not be taken as evidence of the wishes of the majority. Those who are content with what is proposed to be done say nothing; and this class forms an immense majority, while the few who, from timidity or from more selfish motives, are opposed to the proposed measure, attempt to manufacture what they are pleased to call public sentiment, and *instruct* their representatives accordingly. I, for one, do not feel bound by *such* instructions. I, for one, am prepared to go for a measure founded upon the eternal principles of justice—a measure which the exigencies of the treasury demand—and fearlessly to appeal to an honest and intelligent constituency to sustain me in my course.

The motion to postpone was lost, and the bill passed by a vote of 17 to 16, being, with a very few exceptions, a party division.

In the House the same expedients were adopted for the purpose of defeating it as were resorted to in the Senate; and obnoxious and incongruous amendments were offered to render it unpopular should it become a law. In that body it was in charge of the Honorable Benjamin S. Cowen, the representative of Belmont County, who discussed and managed it with marked ability. On the 24th of February it passed the House with a number of amendments by a vote of 35 to 29, also with a few exceptions a party division. The amendments were adjusted between the Houses, and the bill became a law on the 2d of March, 1846.

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On that day, for the first time in Ohio, and perhaps in any State, it was enacted,

“That all property, whether real or personal, within this State, and the moneys and credits of persons residing therein, except such as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, and credits, or the value thereof, shall be entered on the lists of taxable property, for that purpose, in the manner prescribed by this act.”

The principal exemptions were public property, burial places, property used for public worship, State stocks, household and kitchen furniture to the amount of two hundred dollars, wearing apparel excluding watches, food provided for the family, and farming and mechanical implements and tools in actual use; and each person was also allowed to deduct his liabilities from his moneys and certain specified credits. The details of the law fully carried out and enforced the principle upon which it was based, as declared in the first section.

The contest over this law did not end with its enactment. During its pendency it was associated with the banking law of the previous winter, and the same party which opposed the one opposed the other also. The revenue law was made the main issue in the campaign of 1846; and it, with the banking law, was referred to by the leading Democratic paper as “the two laws against which the Democracy are waging a war of extermination.” The same paper spoke of it also as the “plunder law.” The banks were called “Kelley’s swindling shops;” and “the tax law a failure” was the

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heading of more than one editorial article. During the campaign a paper was printed and circulated, called the *Tax Killer*. The canvass was unusually embittered by the most unjustifiable attacks upon the laws, and applying the most opprobrious epithets to their author. Notwithstanding the extraordinary efforts which were made to defeat it, the law was sustained; and in its practical working all the results claimed by its advocates were fully realized.

The total value of taxable property in 1846

under the old law was . . . \$150,293,132

In 1847, under the new law, it was . \$410,763,100

The personalty in 1846 was . . . \$40,352,496

The personalty in 1847 was . . . \$83,564,430

The aggregate of State taxes levied on

\$150,293,132, in 1846, was . . . \$1,214,897

The aggregate of State taxes levied on

\$410,763,100, in 1847, was . . . \$1,331,398

The per cent on the value of taxable prop-

erty for State purposes in 1846 was . 8 mills.

The per cent for the same purposes in 1847

was $2\frac{3}{4}$ mills.

The repeal of the law, or even a modification of its principle, was never afterward proposed. That principle was embodied in the constitution of 1851, and nearly all the important provisions of the law enacted under that constitution are taken from the law of 1846, and are still in force.

The benefit which Ohio has derived from this law is

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like that which characterizes the results of every act of Mr. Kelley's public life. The State has never been embarrassed for the want of funds; its credit has been equal to that of any other State, and even to that of the General Government; the debt has been reduced to less than four millions after paying all the expenses incident to the Rebellion. And, although the law has not always been faithfully administered, and taxable property has been kept off the duplicate by unworthy devices and illegal expedients, still there has been no serious individual oppression or public embarrassment. Above all, every tax-payer has been conscious that the credit and honor of the State has been above reproach, and also that they are beyond the reach of demagogues and secret or open enemies. It has outlived its opponents, and is an enduring monument to the wisdom and sagacity of its author.

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CHAPTER XV.

RAILROAD BUILDING.

The beginning of railroads.—The Columbus and Xenia Railroad.—Selling bonds in New York.—The Cleveland, Columbus and Cincinnati Railroad.—The Cleveland, Painesville, and Ash-tabula.—Difficulties about gauge.—A new battle of Erie.—A strategic movement.—Buying up a right of way.—Mob-law at Erie.—Mr. Kelley's "Five Mile Farm."

Forty years ago the transportation of produce, merchandise, and passengers in Ohio was almost exclusively confined to canals, wagons, and stage-coaches. There were but two railroads in the State; and they were constructed in the rudest form, having strap rails which rendered them dangerous as well as rough and uncomfortable for passengers. These roads were from Cincinnati to Xenia and from Springfield to Sandusky. We can hardly realize that our great system of railroads in Ohio and in the West was commenced and built up within forty years. In 1847 the only public mode of traveling in every direction from our capital was by the slow and unpleasant stage-coach and along the line of the canal; and a portion of the year the inhabitants remained at home, on account of the condition of the roads and the swollen streams, unless compelled by necessity to travel.

In 1845 a charter was obtained, and a company

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orgaized, to construct a railway from Columbus to Xenia. Some surveys were made and so far completed as to be ready for contracts on a part of the line. The company as organized was unable to proceed any further, and it was reorganized by changing a portion of the Board of Directors and by the election of Mr. Kelley as its president. He accepted the office, and with the aid of the engineer in a short time the route was established and the road put under contract. Mr. Kelley took the bonds of the company to New York, negotiated their sale, and procured sufficient money, in addition to the proceeds of the stock, to complete and equip the road. These were among the first, if not the first, western railroad bonds which were sold in New York. He was well-known to the capitalists of that city, who had unusual confidence in his judgment, and felt assured that he would not undertake any enterprise, unless it was meritorious and was abundant security for both the principal and interest of its liabilities. The road was finished with the heavy T rail, and was the first road upon which that rail was used in Ohio. The road was completed and opened for traffic in February, 1850.

A few years previous to 1847 a charter was obtained and a company formed for the construction of a railway from Cleveland to Columbus, under the name of "The Cleveland, Columbus, and Cincinnati Railroad Company." The incorporators were all or nearly all citizens of Cleveland. Books were opened for stock subscriptions, but a

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sufficient amount could not be procured to justify the commencement of the work. Efforts were made at different times to procure subscriptions, with but little success. Those who had charge of it made a last and energetic effort in the summer of 1847, but were as unsuccessful as they had been previously. It was then proposed, by some of the ardent friends of the project, that Mr. Kelley should be procured to accept the presidency of the company. This was mentioned to those who had subscribed stock and others, and resulted in additional subscriptions to a considerable amount, on condition that he should be such president; some of them remarking that if he took charge of it the road would be built, and all feeling assured that he would not undertake it unless he thought it would be pecuniarily successful.

About the first of August Mr. Richard Hilliard and Judge Thomas M. Kelley, a brother of Alfred Kelley, both of Cleveland, were requested by those interested to go to Columbus and confer with the latter on the subject. They went down, and a long evening was devoted to a full discussion of the project, the previous failures, the effect of the road if built, and the difficulties which had been encountered, and which the committee thought insurmountable except by Mr. Kelley. He declined to accept the presidency offered to him, on account of his long public service, his need of rest, his private affairs which had been neglected, and above all his desire to spend the remainder of his life with his family. Mrs. Kelley made an urgent appeal in her behalf and that of

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her children that he might be allowed to remain at home. The interview was pleasant, though the committee was much disappointed; and, as they parted with Mr. Kelley at the door, Mr. Hilliard, grasping his hand, said: "I appreciate your reasons for declining our request, and I admit we have no claims on you. This project, however, is very important to Cleveland and the State, and should it fail because you decline to take hold of it, will it not be a source of regret the residue of your life?" To which Mr. Kelley replied: "I will see you again in the morning." Mr. Hilliard knew that his last appeal would have more influence with Mr. Kelley than all other considerations combined.

In the morning they met, and Mr. Kelley remarked that the subject of their conversation the evening before had occasioned him much thought and anxiety during the night, and he had made up his mind that it was his duty to yield to their request.

The committee returned to Cleveland; the president then in office resigned; and on the 13th of August Mr. Kelley was made president and took charge of the road.

A meeting was soon held in Cleveland, at which he and others presented the advantages of the road, and there was a large increase of stock subscriptions, which, together with subscriptions at Columbus and along the line, and the bonds of the road, enabled him to proceed with the work.

His familiarity with the topography of the State enabled him and the engineers to examine and locate the

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line in a comparatively short time. The entire road, though one hundred and forty-five miles in length, was all included in one contract, which was executed according to its terms, and the road was completed with heavy T rails and opened for business on the 22d of February, A. D. 1851. While the grading was in progress, Mr. Kelley went to Wales and procured the iron.

The opening of this road was celebrated by the inhabitants of Cleveland with unusual demonstrations. It was the first leading to that city, and contributed much to the growth and wealth which have since made it famous. The success of the road and its effect upon Cleveland were particularly gratifying to Mr. Kelley, as he never lost any of his attachment to his early home and associates.

These two roads were feeders to each other, and from the time they were completed yielded large profits to the stockholders, profits which far exceeded their expectations, and also any estimates furnished to them by Mr. Kelley.

While these roads were in progress, a charter was obtained for the "Cleveland, Painesville, and Ashtabula Railroad Company," authorizing the construction of a road from Cleveland to the Ohio line. It was intended, also, to extend the road to Erie in Pennsylvania. A road from Toledo to Cleveland had also been commenced. The road from Cleveland to Erie would complete a line to New York City, as the New York roads were expected to construct a road from Buffalo to Erie. That the road

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from Cleveland to Erie, when completed, would be a public benefit and profitable to the stockholders was evident. A continuous line from Cincinnati to New York City would thus be secured, and this last link in the chain would receive all the passengers and freight from the South and West. Some surveys had been made and parts of the line marked for location. Mr. Kelley had been a director from the time the company was organized, and was appointed president on the 19th of March, 1857.

Very soon after his appointment he passed over the route with an engineer, and, after a thorough examination, changed much of the line to lower ground and to the present location. There was no serious difficulty to encounter, and there was no incident of special interest in the construction of the road to the Pennsylvania line. Its construction from that line to and through the city of Erie presented difficulties which, if they had been known, few would have undertaken to overcome.

There were two roads through the State of New York, one of which terminated at Buffalo and the other at Dunkirk, both places being on Lake Erie. One of them, the southern, had adopted the broad or six feet gauge, and the other, the New York Central, a gauge of four feet, eight and a half inches. Each of these roads desired to extend its line to Erie, in order to connect with the western road. The city of Erie was quite willing the roads should be constructed, but was determined that neither should have the Ohio gauge of four feet, ten

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inches. If, therefore, the road east of Erie adopted the wide gauge, or one narrower than the Ohio road, all passengers would necessarily change cars, and all freight be trans-shipped at that place.

The controversy between the New York roads continued a considerable time. After much negotiation, in consideration of the fact that the railroads from Cleveland and Toledo, then in progress, were of the four feet and ten inch gauge, it was agreed that the New York Central should be extended from Buffalo to Erie with the same or the Ohio gauge, and should be so managed as not to give to either of the great railroad interests any advantage over the other. It was assumed that the railroad company in the State of Pennsylvania, having a charter to build a road from Erie to the New York line, would adopt the same gauge. That road was unfortunately under the control of inhabitants of Erie, who not only refused to do what was expected, but commenced to lay down a six-foot track on their road of nineteen miles in length. They proceeded still further, and procured a law to be passed, called the "gauge law," requiring all roads from Erie to the New York State line to adopt a six feet or a four feet, eight and a half inch gauge, and between Erie and the Ohio line a gauge of four feet and ten inches. By this means they aimed to secure a perpetual change of passengers and freight at the city of Erie.

Mr. Kelley and the company he represented were opposed to any change of the gauge west of Buffalo, and

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therefore they incurred the displeasure and ill-will of Erie and of the State of Pennsylvania to such an extent as to prevent any favorable legislation or grant of authority to construct a road to Erie.

Although it would seem to be essential, in order to procure a change of passengers and a trans-shipment of freight at the city of Erie, that a road should be constructed from the Ohio line to Erie, authority for that purpose could not be obtained, and the project would have failed, for the time being at least, if it had not been under the control of one possessed of an extraordinary share of originating talent, as well as courage in the accomplishment of what was right.

Mr. Kelley ascertained that the Franklin Canal Company had a charter which was in full force, authorizing the construction of a canal along the line of the proposed road. An amendment to the charter also authorized the construction of a railroad instead of a canal, and the use of the towing path as the bed of the road. By an arrangement with the stockholders, he procured a majority of the shares and transferred them to the Cleveland, Painesville, and Ashtabula Railroad Company. He then commenced building the road from the Ohio State line to Erie under this charter. The city of Erie procured an injunction, and although, on the final hearing, the injunction was dissolved on technical grounds, it was held by the court that the charter did not embrace about five miles from the Ohio State line, east to what the court claimed to be the nearest point of the canal as

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described in its charter. There were thus five miles for which there was no charter, and the city of Erie, sustained by the State of Pennsylvania, now opposed any grant of authority unless the gauge was such as to require a change of passengers and freight at that city.

In this dilemma Mr. Kelley proposed to the railroad company that some of its younger members should buy the land along the five miles, build the road, and contract with the company for the use of it on fair terms. None were willing to take the risk. He then made an arrangement with the company to borrow from it the money necessary for the purpose, and he undertook to complete that part of the road on his own account. He was determined that neither Erie nor the State of Pennsylvania should prevent the construction of this great thoroughfare between the East and the West.

It needs no explanation to satisfy any one of the great risk involved in such an undertaking, even if the hostility of Erie and the State were not considered. Mr. Kelley knew very well that without this five miles the residue of the road would be comparatively valueless, and therefore undertook the work, notwithstanding the pecuniary hazard. He went immediately upon the line, and very soon became acquainted with Judge James Miles, the owner of a farm of several thousand acres through which it passed, and who appreciated the importance of the road and the suicidal folly of the city of Erie. The Judge was widely known, being connected with the agricultural interests of the State and with its agricultural college, and being very

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influential in elevating and improving both the farming and farmers of the State. He was familiar with the value of lands, and acquainted with most of the owners along the line of the road. His character for honor and ingenuousness was such as to command the respect and confidence of every one. The two soon appreciated each other and became warm friends.

With the aid of Judge Miles Mr. Kelley bought the right of way, where it could be obtained, and where it could not he bought the whole of the owner's land through which the road passed. When the purchases were concluded, he was the proprietor of many farms. By a law of the State certain county or township officers were authorized to grant the right to cross the wagon roads. This authority was obtained, and thus a connection was made with the Franklin Canal Company, and the road was completed to Erie in November, 1852.

Previous to this, the Eastern roads, with the Franklin Canal Company, and including the Erie and New York State Line road, had a meeting, and, after much consultation and many concessions, agreed upon a plan by which the latter road should be completed with the western gauge. Notwithstanding this agreement, the connection of the two was resisted in the city of Erie by tearing up the tracks and other acts of violence. Mr. Kelley was threatened with being mobbed if he should presume to appear in Erie. He was informed of the threat while he was at Judge Miles's house, near what is now Miles Grove. He and the Judge immediately drove

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to Erie, and walked through the streets without molestation, except that, just as they were leaving, the Judge was hit, but not injured, by a brick thrown by some person who kept at a safe distance from the two. A few of the citizens did not participate in the folly of the majority, and the hostility between the two parties was such as to disturb their social relations, the effects of which are said to have continued to this day.

The proceedings of Erie and of the State involved much litigation in the State courts, but the railroad was used, notwithstanding delays and losses, and to some extent was protected by an order of the United States, made at the request of Mr. Kelley, declaring it a "post road." This state of things continued until January, 1854, when the State of Pennsylvania repealed the charter of the Franklin Canal Company. This act presented the question of authority on the part of the State to revoke a charter after millions had been legitimately expended in pursuance of its provisions. This question was presented to the Circuit Court of the United States by the attorneys of the company, Wm. Meredith and E. M. Stanton, the latter of whom was afterward Secretary of War. Mr. Stanton exhibited in this and other cases connected with the controversy the same promptness, energy, and commanding talent which characterized his official conduct during the rebellion.

Before the case was presented to the court for final adjudication, and in May, 1854, the State settled the whole controversy by granting a charter for a road from

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the Ohio State line to Erie, and to connect with the eastern road at that place. It was grudgingly done, and upon terms which an honorable individual would hardly have exacted. One of the surviving directors who was familiar with all the proceedings thus summarizes the action of Mr. Ketley :

“Mr. Kelley purchaaed the right of way (and in many cases entire farms) in his personal right, and built the road as the sole proprietor, and thus incurred large risk and responsibilities, from which he was only relieved, when, after great delays and vast expense, a charter was finally obtained, he conveyed his five miles to the corporation upon terms which were satisfactory to both parties.”

He thus in 1854 closed his connection with railroads, except as a director, in which capacity he was instrumental in establishing rules and regulations beneficial both to corporations and the public.

The presidency of other roads, coupled with large salaries, was offered to him, but they were declined because he considered them in advance of the business of the country, and not therefore likely to be profitable to the stockholders or a benefit to the State. In one or two instances his opinions on this subject were severely criticised at the time ; but subsequent events have verified the correctness of his judgment. A gentleman to whom one of the letters was addressed, said to the writer of this after Mr. Kelley's death, “it reads like prophecy.”

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CHAPTER XVI.

CLOSING YEARS.

The fugitive slave law.—Re-election to the Senate.—Sessions of 1855-6 and 1856-7.—The improper use of the public funds.—Investigation of treasury; alarming disclosures.—Bills to secure public funds.—Bill to authorize payment of taxes semi-annually.—Suggestion to Mr. Yapple as to public schools.—Guarding the treasury.—The new State House.—Mr. Kelley's address of welcome.—Close of his legislative career.—The end.

When Mr. Kelley had completed the railroads which connected the East with the West and South, and they were in successful and profitable operation, he regarded his work for the public as finished. The effects of age, excessive labor, and canal malaria upon his originally vigorous constitution, became more and more evident. He therefore contemplated a period of rest during the few remaining years of his life. In this he was disappointed.

Both the State and Nation were then agitated by important and exciting political questions. In the latter the fugitive slave law and the Dred Scott decision were producing a state of public feeling which was not allayed until after slavery was abolished and the rebellion was suppressed. In the former there were questions of State policy growing out of an apprehension in the minds of many that the funds of the State were not sufficiently

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secured against their improper use or loss. Public attention was thus again directed to Mr. Kelley as a necessary public agent, and in the fall of 1855 he was again elected to the Senate.

Although but little more than thirty years have elapsed, it seems almost incredible that at that time a human being could be seized in one State and carried off to another, as a slave, without even a trial or investigation as to his actual condition; and that a slave was mere property, and had no rights which a white man was bound to respect. It seemed to Mr. Kelley that a person claimed as a slave ought to have the right to an impartial trial by jury before he should be carried by force into a slave State; and one of his first acts as a member of the Senate of 1856 was the introduction of a resolution directing the Judiciary Committee to inquire into and report upon that subject. Upon examination it was ascertained that the State was powerless, and could only protest against such wrong and injustice, which the Legislature did respectfully and decidedly.

At this session, as at many previous ones, Mr. Kelley was made chairman of the Finance Committee. It had long been conceded that when there were difficulties to surmount or new and important objects to be attained, no one was so likely to overcome the one, or devise a mode to accomplish the other, as Mr. Kelley. At this session the Finance Committee had much to do. His own observation, and facts which came to his knowledge from other sources, satisfied him that the funds

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belonging to the State Treasury had been improperly used for a number of years; and he was apprehensive that the State had been, and was then, wronged by the misconduct of its Treasurers. For the purpose of ascertaining the truth in regard to the Public Treasury he, as chairman, introduced a resolution that the Finance Committee "be instructed to ascertain and report to the Senate the amount, character, and condition of the funds in the treasury, and that for this purpose they be authorized to employ some competent accountant to assist them in making the necessary examinations;" which was immediately adopted.

The resolution was delivered to the Treasurer, who replied that a committee of one branch of the Legislature had no authority to examine the treasury, and he would not recognize an examining committee from the Senate alone. He denied also the right of the committee to employ an accountant to aid them in such examination.

This communication, on Mr. Kelley's motion, was referred to the judiciary committee, who made a short and decisive report, which opened the doors and vaults of the treasury to a committee of the Senate.

Near the close of the session, and on the 7th of April, the committee made a report, in which it was clearly demonstrated that there were "checks, drafts, bills of exchange and certificates of deposit, the gross sum being \$296,291.26, which had been held (with but few exceptions, and for comparatively small sums), from fifteen

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days to upwards of two months without having been presented either for acceptance or payment." That the committee had "reason to believe, viewing the condition of the funds in the treasury, and the large balance due from the late Treasurer at the time of giving up his office, the various times when parts of that balance were paid to the present Treasurer, and the fact that there still remains a large balance in his hands, that most of the drafts, certificates of deposit, and acceptances now in the treasury, were paid to the present by the late Treasurer, and were obtained by him with the understanding, on the part of the parties furnishing the same, that they would not be presented for payment until the demands of the treasury should make it necessary to demand their payment."

The committee further reported that there was belonging to the treasury the sum of \$147,048.49, consisting of drafts, etc., of a bank and a firm which were considered, as far as regarded these operations, "as substantially one concern;" that "it also appears that both the late and present Treasurers have been, if they are not now, interested in the bank," and that proceedings were then pending to test the question whether the charter of the bank was forfeited.

They also found that the next preceding Treasurer had given his predecessor a receipt in full for the balance due by him without specifying the amount, when he still had in his hands \$302,115.86.

It was also discovered that when the present Treasurer

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took possession of the office, there was an unpaid balance in his predecessor's hands of \$212,432.57. A part of this sum was due from a Cincinnati bank which had failed, a part from a Toledo bank which had also failed, a part from an individual in Dayton who had executed a deed of trust for the benefit of the State, and a part from a firm in Cincinnati which also had failed.

The committee then add :

“When to these circumstances we add the declaration on oath of ———, there seems to be little room to doubt that the late Treasurer was interested in the bank (a bank in Virginia), and used the funds of the State to put it in operation, or at least to sustain its credit.

“The committee can not forbear to express their decided disapprobation of the practice of using the public money either directly or indirectly, for the purposes of private emoluments, or to build up or foster any private company or institution, more especially one in which any officer or agent having the custody of such moneys may be interested.

“Stringent laws of a penal character, combined with frequent and searching examinations by the Legislature or its committees into the management of the moneys and finances of the State, seem to be absolutely necessary to prevent great pecuniary losses to the State, and a still greater depreciation of public morals.

“Since the examination of the Treasury Department by a commission created for the purpose about nine years ago, no careful examination of that department appears to have been made. Years have gone by since there has been even a critical comparison of the books, accounts, and vouchers of the Auditor and Treasurer of State. Thus the great object of making the Auditor's office a complete check on that of the Treasurer has for years been rendered entirely abortive.

“The impossibility of going into a critical examination of all the transactions, book accounts, and vouchers of the Treasury Department, extending through a period of nine years, by a committee of the Senate during the session, will

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at once be seen and acknowledged. Even if ordinary legislative duties did not occupy most of the time and attention of the members of the committee, the entire period of the session would hardly suffice to make such an examination."

The committee reported a joint resolution for the appointment of a joint committee to examine during the recess of the General Assembly the books, accounts, vouchers, records, and proceedings of the Auditor of State, the Treasurer of State, the Commissioners of the Canal Fund and the Sinking Fund. The Legislature, in pursuance of the suggestion, provided for such committee and other investigating committees, with full power and authority, by a law enacted for that purpose.

The annual reports of the Treasurers represented the funds of the State as safe and under their control. Nothing was said explaining their real condition, or showing how large a portion of them were in the possession of favorites or used for other purposes. The Legislatures had met, made appropriations, and adjourned, assuming those reports to be accurate, and to represent the true condition of the treasury. While the Legislature and the public were acting upon the statements in those reports as though they were true, one Treasurer went out of office having his successor's receipt in full and retaining in his hands \$302,115.86, and that successor went out of office retaining in his hands \$212,434.57. The first sum was all paid some years afterward, and a portion of the last sum has been paid, but much of it was lost. In a conversation between Mr. Kelley and Hon.

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Alfred Yaple, who was a member of the House when these proceedings were in progress, Mr. Kelley said, as reported by Mr. Yaple, "that one Treasurer had been the weak, accommodating tool of the designing plunderers who had obtained large amounts of the State's money from him, and could not, or would not, pay them back;" and that his successor "had foolishly undertaken to conceal the fact for him in the vain hope, on the part of both," that the money would be repaid by those who held it. Mr. Kelley then added:

"I am going to prepare a bill which will enable the people to keep their own money until it is actually needed, and stop the dangers arising from public officers and their favorites speculating on the half of it for six months every year, and endangering its loss; and I shall devise a plan by which the actual condition of the treasury can be got at."

The investigation of the treasury disclosed the fact that most of the money was needed in January and July. The taxes for the whole year were then paid in December. One-half of the amount was therefore idle for six months.

In order to diminish the temptation to use the money thus lying idle in the treasury, and also to give the taxpayers the use of it when it was not needed by the State, Mr. Kelley prepared a bill authorizing the semi-annual payment of all taxes. The bill passed the Senate, but was defeated in the House, for some reason which is unaccountable, unless the following statement, copied from the *Columbus Sunday Capital*, may be said to solve the enigma:

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“There were court-house rings in those days as well as now. These, together with the bankers from all over the State who were using the State and county money, fought the measure, just and reasonable as it was.”

While examining the treasury, Mr. Kelley prepared a bill which became a law in April, 1856, which provides that all money paid into or out of the treasury shall only be so paid on the order of the Auditor, and every payment into the treasury shall be receipted for by the Treasurer, and the person so paying shall deposit the receipt with the Auditor, which receipt shall be the sole evidence of such payment.

A corresponding provision is made with reference to payments into the treasury made elsewhere “than at the treasury office in Columbus.”

The details are so drawn that no money can pass into or out of the Treasury without the action of the Auditor, and the Auditor's books must always show the exact condition of the funds of the State; and they can not be misapplied or improperly used without a fraudulent agreement between the Auditor and Treasurer, and the person paying or receiving money. It provides that no money shall be paid out unless the same has been appropriated by law to the purpose for which it is paid. Examinations of drafts and warrants are required to be made four times during the year; and a general examination is required by the Auditor and a person appointed by the Governor once each year.

It also provided that no money belonging to the State

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should be placed, deposited, or kept by the Treasurer or by his direction elsewhere than in the treasury at Columbus, without taking, in every instance, a bond secured by United States or Ohio stocks, or by individual residents as collateral security to the Treasurer's bond, nor until the terms of the deposit, the terms and conditions of the bond, and the securities or names of the sureties, should have been approved by the Auditor and Attorney-General, depositing the same with the Auditor of State.

During the recess between the sessions of 1856-1857 the joint committee appointed to examine the treasury made a thorough investigation and an elaborate report, in which every statement made in that of Mr. Kelley was confirmed by conclusive testimony, and showing that the money of the State had been used, during several preceding years, for illegitimate purposes, by which all the funds of the State were endangered and a large amount was lost.

Mr. Kelley then supplemented the laws of 1856 by procuring the enactment in 1857 of another which requires the Treasurer to collect immediately all moneys belonging to the State in the hands of any other person, company, or depositary, except such as are deposited in strict conformity with the provisions of the act of 1856. It makes it the duty of the Governor every three months to appoint a suitable person, who, in conjunction with the Auditor or some competent clerk in his office, shall examine the books, accounts, and vouchers of the Treasurer's and Auditor's office, and if the amount in posses-

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sion of the Treasurer is less than the amount with which he stands charged in the Auditor's office, he shall be assumed to be a defaulter, and prosecuted as such. The main provisions of these statutes have been retained to this time, and have been very instrumental in protecting the public against the loss or improper use of its money.

The session of 1857 was the first held in the present State House. In commemoration of the event there was, on the 6th of January, a formal celebration of its occupancy. The citizens of Columbus acted in the capacity of host, and the Legislature, public officers, and citizens of the State generally were invited as guests. A very large number assembled and participated in the proceedings. Mr. Kelley was selected to deliver the address of welcome, and at the appointed time in the evening spoke as follows to as many as could get within the reach of his voice :

*"Fellow citizens of Ohio:—*I am commissioned by my neighbors of Franklin County and the city of Columbus to tender you a hearty welcome to the capital city, and especially to the building in which we are assembled. In this splendid building they claim, on account of its location among them, no peculiar rights or privileges. It belongs to the citizens of Ohio in common. It was created in accordance with their will, with their money, and for their use.

"But we of Columbus, because it is in our midst, because we are at home, have assumed to do the honors of the day, to invite you to come among us, to join us in dedicating the people's house to the people's use; and in rejoicing that it is so far finished as to admit at least of its partial occupation for

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the purposes intended. We trust that for thus assuming we shall be forgiven.

"It is said of Athens, that glorious little republic of antiquity—little in extent of territory, small in population, but teeming with men of genius scarcely short of inspiration, whose thoughts, words, and works, seldom equaled, never surpassed, have made an impression never to be effaced, and exercised a controlling influence over civilized man in all enlightened nations from their time to ours, and will continue to do so to the end of time—that while her public buildings exhibited the perfection of grandeur and symmetrical beauty, her citizens occupied dwellings of the most unpretending character. Now, though I am too much a lover of architectural beauty to condemn it even in private residences, I can not but admire that devotional feeling which impels men to dedicate to God, and that patriotism which leads men to dedicate to their country, the most costly and magnificent specimens of architecture.

"The building in which we are now assembled combines that sublime massiveness, that dignity of form and feature, that beautiful symmetry of proportions, which together constitute true architectural excellence in a high degree. True, it may have its imperfections; what work of man has not? Still, it is worthy of the great and patriotic people by whom and for whom it was erected.

"It is emblematic of the moral grandeur of the State whose councils are here to be assembled, whose archives are here to be kept, and I trust safely, so long as Ohio shall be a State, or time itself endure. May those councils be so wise that their beneficent influence will be as enduring as these walls.

"Citizens of Ohio, members of the General Assembly, we congratulate you. Let us congratulate each other, that this noble structure approaches completion.

"Again, on behalf of the citizens of this city, and of this county, I bid you a cordial welcome."

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Governor Chase responded on behalf of the citizens, and after examining the legislative halls and other departments of the building, and partaking of a bountiful supper, they all retired at a late hour, much gratified both with the building and the reception.

The sessions of 1856 and 1857 closed Mr. Kelley's legislative labors and his public life. When he became a member for the first time, in 1814, he was the youngest man in either branch, and in 1857 he was the oldest.

During a portion of the last two sessions, he was confined to his house by acute disease, and much of his legislative work was performed when most men would have yielded to their physical infirmities and remained at home. As was his custom and nature, he did not spare himself when discharging a public trust or duty. What had been especially under his charge had been accomplished, except the passage of the bill providing for the semi-annual payment of taxes. This had passed the Senate and was pending in the House. Its disposition in that body, and Mr. Kelley's comments, are referred to by Mr. Yapple as follows :

“It has already been stated that Kelley tried, in every way, to get the Legislature to adopt his plan for the semi-annual collection of taxes—finally tacking it on the general appropriation bill, but that he failed because the House voted it down. When that vote was taken, the end of the session and the time for adjournment was at hand. It was after midnight—a night dark, blustering, and stormy; snow and rain commingled and falling thick and fast. Kelley listened with stern anxiety to the roll call and the responses of the members. The “no,” as uttered by many, was not only emphatic, but

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delivered in a tone and manner as if intended for him to hear and see that he was aimed at, and indicated intentional insult to him. The result was announced, the measure declared lost, and Kelley buttoned his coat up to his throat, drew tightly around his neck his fur collar, adjusted his head squarely and firmly upon his shoulders, and started for the door. Feeling mortified at the disrespect shown him, I sought his side and expressed my regret for what had transpired. 'Oh,' said he, 'I am used to it. It don't trouble me. These are honest, well-meaning men enough; but I do wonder how many of them were able to find their way from home to Columbus. I hope they will find their way back in safety, and turn their attention to something they know more about than legislation.' . . . And then with a manner that spoke his assurance of the adoption of the law for the semi-annual collection of taxes at no distant day, in spite of the action of that Legislature, the old man disappeared in the darkness of the street in that midnight storm, his living voice to be heard no more forever in the councils of the State."

That bill became a law on the 2d of April, 1859.

In the following letter Mr. Yaple gives a clear and satisfactory statement of Mr. Kelley's position upon our common school system. Although the letter was not written for publication, its introduction here is authorized:

CINCINNATI, *March 9, 1886.*

HON. JAS. L. BATES.

Dear Sir:—Yesterday I sent you a copy of my essay before our Literary Club on Alfred Kelley, read in 1875.

Time did not admit of my saying any thing about Mr. Kelley's position upon, and efforts in behalf of, our common school system. In a biography this should be appropriately treated.

As late as 1856-7, when I was in the Legislature, some of the wealthy counties, some of my constituents from Ross, especially, wished to have the amount of the school taxes

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raised in each county applied to the schools in such county. I spoke with Mr. Kelley about the matter. He said, in substance, that the Constitution of the State enjoined upon the General Assembly the passage of suitable laws to encourage schools and the means of instruction; that to do so properly he had always maintained that every child in the State had an equal right to the benefit of this provision; and its equal share of the public money raised by the State for common school educational purposes should be appropriated for it; that the rich could educate their children, and only the poor stood in need of State aid, and that by apportioning to every child in the State its equal share of money, the poorer class would receive a benefit of which, by any other method, they would be deprived, and the system fail in accomplishing the end for which it was created. He said great difficulty was encountered in securing school moneys from the localities (counties) where raised, and in applying them equally, according to the number of school children, in every school district in the State. Local interests were against it, and the prejudice always existing against *change*. Change did not always signify reform or improvement, but any great beneficial change had always met and always will meet determined opposition, as it breaks up the settled habit, and inspires fears of imagined calamities; the obviously necessary and most beneficial changes always meeting with the strongest resistance, while a mere "tinkering" measure of no real benefit gets through smoothly. My judgment according with his views, I declined to introduce any bill, or advocate any measure, looking to the expenditure within each county of school moneys raised by it by taxation.

I hope a complete biography of Mr. Kelley will be published. Had he lived in, and done for, any New England State, what he did for Ohio, his published life would long ago have been for sale in every book store, and on every book stand in the Union and England.

Yours truly,

ALFRED YAPLE.

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After these sessions Mr. Kelley had a short rest, but neither health nor strength. The recent strain upon him was more than he could bear. He had previously withdrawn from the responsible business relations which had occupied a large portion of his time, and although he was able to enjoy the society of his family and friends, which was always grateful to him, his constitution was too much broken to admit of even a partial restoration to health. Slow paralysis soon commenced its work, and was beyond the reach of medical skill. He was aware of its commencement and progress, but his cheerfulness did not forsake him, and patience, charity, and good will characterized his feelings and intercourse until his death on the second day of December, A. D. 1859, at the age of seventy.

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CHAPTER XVIII.

PERSONAL TRAITS.

Mr. Kelley's probity.—Originating talent.—Good judgment.—Executive ability.—Generous instincts.—Literary tastes—Love of poetry.—Scientific knowledge.—Familiarity with geography.—Hospitality.—Mr. Yaple's reminiscences.—Business habits.—Domestic traits.—Recollections of Mathias Martin and Judge Swan.—“Alfred Kelley's place in history.”—Henry Clay's estimate.—The last visit of his life.—“Just like him.”

The preceding narrative necessarily implies in its subject an extraordinary degree of integrity, an unselfishness rarely equaled, a more scrupulous attention to public and private trusts than to personal interests, and an entire subjection of all private gain to the public welfare.

Mr. Kelley had the originating talent which is so rare among men. His life exhibits a series of efforts to develop the State, to advance the education and morals of its people, and to secure its property against loss by public or private fraud or unfaithfulness. Coupled with it, he also possessed good judgment, which is exhibited in the success of all his projects. To this was added also executive and constructive talent. These four qualities are rarely combined, and the history of this country furnishes very few instances of men who have possessed them in an eminent degree. It is easy to find fault and

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discuss subjects, but it requires a higher order of talent to develop the resources of a State, or save it from the ruin of bad management. It is not difficult to acquire a fortune, if it is made the sole object of life, but it is necessary to rise to a higher plane before much can be accomplished for the good of others. As a consequence, when any important object was to be accomplished for the State, or any evil remedied or provided against, attention was immediately turned to Mr. Kelley as the most eminently qualified to perform the service.

Though stern in the discharge of public duties and as trustee for others, he was the reverse in the transaction of his private business. In his private business he was liberal and generous, almost to a fault. He had little regard for property, and at no period in his life did he strive, or make it a primary object, to accumulate it.

It was said of him by an intimate friend that "there was not a particle of envy, avarice, or malignity in his composition." This is not an exaggeration. He was always open and frank in his business and intercourse. He had no concealments and little curiosity.

Although so eminently qualified for, and so constantly employed in, the discharge of public duties and trusts, his literary and scientific attainments were above those of the average of educated men. He was fond of poetry, and was familiar with all the standard poetical works. He read much, but less than many educated men. He took little pleasure in works which did not furnish him food for thought, and entertained the opinion that the

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modern tendency is to read too much and think too little. In the winter of 1847, he delivered some lectures before the Columbus Mechanics' Institute on the subjects of light and heat, in which, among other things, he claimed and demonstrated that light, heat, electricity, and magnetism are different exhibitions of the same agent.

His topographical knowledge was extraordinary. The rivers and mountains, the water sheds, the plains and deserts and atmospherical currents of the globe, were familiar to him, and a gratifying source of study. Once, when he was riding from London to Edinburgh in a stage coach with a number of Englishmen, the latter were discussing the name of a stream they had just crossed, and were much surprised to be informed by an American of its name, and also to what river it was a tributary. Many years before a canal or a railway was projected between St. Petersburg and Moscow, he pointed out on a map, to a member of his family, the route for either—where the summit of a canal would be and how it could be supplied with water. A railway has since been built substantially on that line. He had also an unusual fondness for nature; always preferring the country, and the works of God, to the works of man. His feelings were often moved by the grand and beautiful in natural scenery.

His hospitality was such that he kept what is called an "open house" from the time of his marriage to his last sickness. Company at meals was a common, and at

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some periods, a daily occurrence. At his table the conversation was uniformly interesting and instructive.

Some of his peculiarities are well presented by Mr. Yapple, in his "Reminiscences." Though a political opponent, he was partial to Mr. Kelley, and studied his character. He says :

"But I feel that the limits of an essay will not admit of doing any kind of justice to the public life and acts of Alfred Kelley. When an extended history of Ohio shall be written, he will fill many and its most important pages. I can do no more than give a few examples from my own observation, illustrating the character of the man. In stature, Mr. Kelley was between five feet ten and eleven inches; he was compactly built, neither broad nor slender; his head was set firmly, his appearance being that of a man carved out of a block of marble. He neither affected popular manners nor sought popularity. He possessed, emphatically, the *fortiter in re*, with but little or none of the *suaviter in modo*. His mind worked with the accuracy of the geometric lathe, and his action and conduct adhered strictly to the line of his ideas. This made him unpopular with all who sought, from personal interest or supposed better information, to induce him to depart from or vary plans or purposes he had formed. To such he listened with impatience, and showed them but little respect, but adhered firmly to his purpose and moved straight toward the object he had in view. This enabled him to construct the canals within the time and for the sums estimated. He would not vary the proper line of the work to accommodate any local interests, and this caused many people to feel hardly toward him; but, feeling that he was right, he was heedless of their clamor and opposition. One would hardly expect to find a poetical nature in such a man; yet I was astonished to find how intimate he was with Shakespeare and Milton. He seemed to me to have memorized the principal parts of the works of both.

"Shortly after I entered the Legislature, and had become acquainted with him, he gave me some directions as to the proper course to pursue, which, I think, could be followed with advantage to the country and themselves by congressmen and legislators. Said he :

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"1. If a matter be under consideration about which you are indifferent, say nothing, and, as a rule, vote 'No.' A negative vote will always be less to your injury, and give you less trouble than an affirmative one.

"2. If it be, in your judgment, wrong, always oppose it squarely and determinedly.

"3. If you favor the general object of the bill, but think the provisions and details of it are inadequate, or not practical, begin by presenting a better, or you will be regarded as a mere captious objector, or, at best, a critic more or less respectable, but will tacitly confess yourself incapable of doing what you admit ought to be done; and you will expose yourself to the danger of being thought a secret enemy of the measure but too cowardly and insincere to openly avow your hostility.

"4. Before preparing or introducing a bill, carefully examine all the legislation affecting the subject in any manner, and consider what the common law would be in the absence of all legislation. Should your bill pass, after you have framed its provisions with such knowledge, it will have the merit, at least, of not confusing the law and thus breeding litigation.

"He then said that he could not recall any instance in which any statute framed by him had ever had a disputed construction by any department of the government or in any court.

"Were these rules observed by those who introduce bills in the Legislature, there would be far fewer of them; they would be less voluminous; and our laws would be much wiser and freer from confusion and uncertainty.

"He despised cant and hypocrisy. . . .

"His love of order was almost extreme. . . .

"His love of punctuality, in keeping hours set for meetings appointed for any purpose, was carried into social life. Where parties were given upon the announcement that Mr. and Mrs. So and So would be at home on a given night, at such an hour, he disapproved decidedly of the invited not appearing before 10½, 11, 11½, or 12 o'clock, regarding it as a mere sham-seeming by such persons that they were so independent in their circumstances that time was of no consequence; that they could afford to run all night and sleep all day. This want of regard for hours designated for the assembling of parties had become the fashion in Columbus. He gave a party, and an-

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nounced, upon the cards of invitation, that Mr. and Mrs. Kelley, on the evening designated, would be at home from 8 until 12 o'clock, letting the late party-goers know that their usual hour for attending was the time fixed by him for their leave-taking."

Mr. Kelley's local and personal attachments were unusually strong, and his affection for his family was intense. And, notwithstanding all the unjustifiable and unreasonable abuse which was often heaped upon him, he never harbored or permitted himself to cherish enmity or ill-will. Some of those who published the most atrocious attacks upon him lived to praise him for his services on behalf of the State. One of the leading newspaper writers and one of his bitter defamers, on more than one occasion within the past year or two, said to the writer that Mr. Kelley's biography should be written, as he had done more for the development and financial and commercial prosperity of Ohio than any other of its citizens.

In an article published more than twenty-five years after Mr. Kelley's death, in the *Columbus Sunday Capital*, a paper politically opposed to him, and much of which article was dictated by a strong partisan and political adversary, Mr. Mathias Martin, are the following statements, which fairly illustrate how his character and services are now estimated:

"I remember Alfred Kelley very well," said Matt. Martin.
"He was a man of force and intellect; in person he was dignified and commanding, sedate in his manners, and gentlemanly."

"Although I was Mr. Kelley's political antagonist, and

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fought him during every campaign, I always regarded him as the soul of honor in every trust held by him, and no one could charge that he appropriated a cent of public moneys to his own uses. . . .

"At the head of Sixth Street, on Broad, stands a roomy and stately structure, the builder of which passed away over a quarter of a century ago. The architecture is of a severe Grecian type, and reminds one of Monticello or Mt. Vernon. Being in a large park, it is often mistaken for a Governor's mansion, or one of the public institutions. The owner and builder of this structure was Alfred Kelley, one of the marked men of the State, and one who has left an indelible impress on our finances, credit, the means of transportation, and the internal improvements of the State.

"The *American Encyclopedia* contains some twenty or thirty lines concerning the life and services of Mr. Kelley, which is nearly all the printed information at hand concerning a citizen who, in his time, has had more influence on the financial and business legislation of the State than any one in it, and one to whose energy Columbus and the State owes the construction and working of its system of land and water transportation [*sic*]. . . .

"The *Capital* has collected from among the few early contemporaries of Mr. Kelley who still remain on the field of action, some pertinent facts which in the light of events that have transpired since his death, are doubly interesting, for they prove his wise judgment and foresight. The facts gathered at the outset impress one that a man's acts do not live but for the moment, but the effects of them, whether for good or bad, continue long years after the actors have passed away and are forgotten.

"It was a comparatively small matter at the start, or seemed to be, when Ohio abandoned imprisonment for debt, or when the State credit was saved untarnished, or her system of taxation and finance completely reformed, or her great public works honestly built, yet how beneficial have these measures been. How, like the free air and sunshine, do all enjoy them, and it is the leader and prime mover in these works—Mr. Kelley—whose career, or the salient points in it, we propose to summarize. . . .

"At the outset of Mr. Kelley's career, Ohio was a rude, frontier State with but few means of communication, little wealth, and crude systems of laws and taxation; at his death

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it was firmly established as the third State in the Union, prosperous and flourishing; and in bringing about these changes and paving the way for them, Mr. Kelley showed a master mind.

"Mr. Kelley led in advocating the laws for building the canals, and after they were passed was made the acting commissioner. The people of the State told him in effect that as he had claimed the canals could be constructed for so many millions, that 'there was the money, go and build them.'

"He did build them for the amount claimed, and it was only his unswerving integrity that enabled him to do so, and save the credit of the State.

The same article under the title of "reminiscences," repeats what had been said by Judge Joseph R. Swan a few days before.

"I do not remember what Mr. Kelley paid for his East Broad street place, said Judge Swan the other morning, but suppose it was about \$30 an acre. You can have some idea of what sort of a piece it was when I tell you that Broad, in front of where the Cathedral now stands, was laid with corduroy. . . .

"For several years before Mr. Kelley built the residence in which he died, I am convinced that his entire family expenses did not exceed \$700 or \$800 a year, all told. He lived very economically. His wife, too, whom I well remember as she appeared in those days, was a most noble woman. Things were different in those homespun times, said the judge, reflectively. I think that the key to Mr. Kelley's great success was his integrity. You younger generation have scarcely any idea of its importance and far reaching effects in a man's character, and more especially if he is a public man. . . .

"He was rigid with the contractors on the canals and railways, and you may be sure that there was no slipshod work or nonsense permitted. He had rooms, I remember, in the old Goodale Hotel—in that part where Eberly's store now stands—from which he used to start out in a morning down the line of the canal, armed with a long rod, to prod into the canal banks for logs, which the contractors would try to

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run in as so much earth-work. He was a regular terror to them."

A few days after the preceding article was published, the same paper contained the following:

"ALFRED KELLEY'S PLACE IN HISTORY.

"A recent issue of the *Ross County Register* has the following:

"The last *Columbus Sunday Capital* has a long article in regard to Hon. Alfred Kelley, an old-time citizen of that place, showing that he was 'the father of our system of internal improvements; the author of the law abolishing imprisonment for debt in Ohio; the originator of our system of taxation;' that he suspected and tried to get at the Breslin defalcation a year or more before it became known to the public; and, finally, that the Ohio State Banking System, of which he was the author, furnished the model for our present National Banking System. The three last items in this catalogue of facts were brought out in an editorial published in the *Register* something over a year since, previous to which time it seemed to have escaped the observation of others that the Ohio State Banking System, which was superseded by our present National Banking System, really furnished the model for the latter system. . . .

"Under the Ohio system, State bonds deposited with the Treasurer of State furnished security to the note-holders, as National bonds deposited in the United States treasury now furnish the security for the redemption of National bank-notes. Previous to the adoption of the Kelley plan, the holder of a bank-note had little, if any, security beyond the assets the bank might happen to have on hand at the time of suspension; after its adoption, the note of a broken bank became as good as gold. Previous to the adoption of the Kelley plan of taxation, a capitalist might reside in Ohio, and by loaning his money to people residing outside of the State, entirely escape taxation. . . .

"Both of these measures, so salutary in their effects, met with the united opposition of the Democratic party, and Mr. Kelley had not a little trouble with a good many of his party associates in the Legislature, who chafed under his leadership, to gain their support. But as a practical legislator he was head and shoulders above every other man of his time residing

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within the State, and it is doubtful whether he had his equal in that way outside of it.

“But with all his ability, Mr. Kelley was not popular with his party; and as to his political enemies, they hated him with what King David calls ‘a bitter hatred.’ But the State owes him a debt of gratitude for his great services in her behalf, and would honor herself by erecting to his memory a statue in the most eligible situation in the State House grounds.”

A remark made to one of Mr. Kelley’s daughters by his friend, Henry Clay, may with propriety be added: “Mr. Kelley had too much cast-iron in his composition to be popular.”

Shortly after his death, the friend who received the visit referred to wrote as follows:

“With a benevolence and sympathy only felt by the pure in spirit, the last visit of his life was one of condolence to a friend in affliction, and with and for him he probably shed his last tear. In this interview, he referred to a presentiment that he should not live to witness the commencement of another year, a prevision which was fatally verified.”

Strange as it may seem, after such a life of activity, of employment and antagonisms so varied, when his work was done, his integrity, usefulness, and disinterestedness were fully conceded by those who had traduced him; and at the close of his life no one commanded more respect and admiration from all classes of his fellow-citizens.

A tall, well proportioned, and massive obelisk of granite marks the spot where his body lies; and a laborer who knew him well, after examining it, said, “It is just like him.”



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